TEXAS REGISTER

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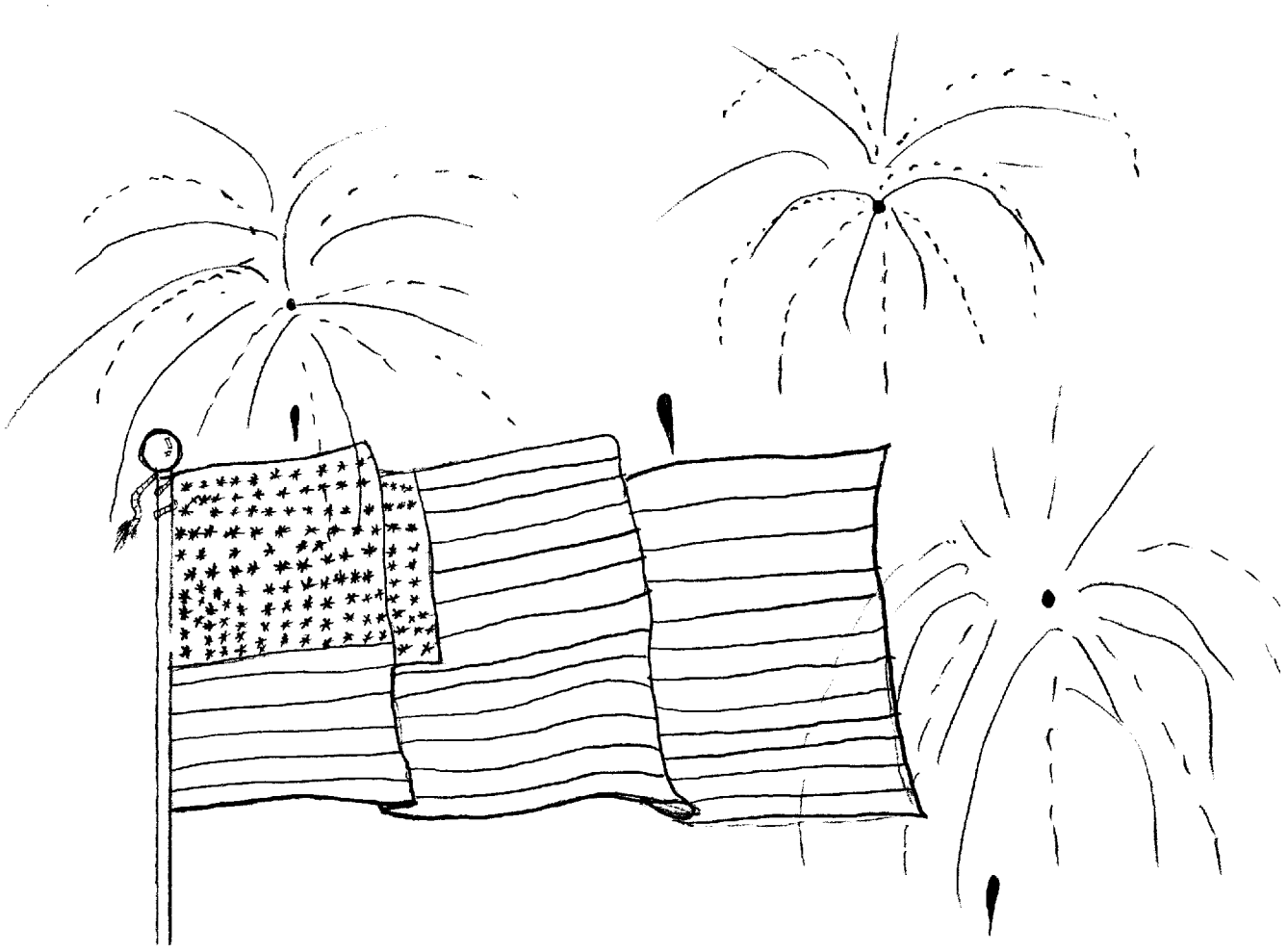

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
http://www.sos.state.tx.us/texreg

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.state.tx.us/Government

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for June 20, 2005

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2009, Rolando B. Pablos of San Antonio (replacing Leslie Kinsel whose term expired).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2009, Betty Ann Peden of Hondo (replacing Patricia A. Sutton who is deceased).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2009, Lindsey Alfred Koenig of Orange Grove (replacing Lawrence Warburton whose term expired).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2011, James R. Marmion of Carrizo Springs (replacing Homero Jaime Saenz who resigned).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2011, Yale Leland Kerby of Uvalde (replacing Leroy Vaden whose term expired).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2011, Fidel Rul of Alice (replacing Beth Knolle of Sandia whose term expired).

Appointed to the Rio Grande Regional Water Authority, pursuant to SB 1902, 78th Legislature, Regular Session, for a term to expire February 1, 2009, Glenn D. Wilde of Lyford.

Appointed to the Soil and Water Conservation Board, pursuant to HB 3442, 78th Legislature, Regular Session, for a term to expire February 1, 2006, Larry D. Jacobs of Montgomery.

Appointed to the Soil and Water Conservation Board, pursuant to HB 3442, 78th Legislature, Regular Session, for a term to expire February 1, 2007, Joe L. Ward of Telephone.

Appointments for June 22, 2005

Appointed to the Crime Victims' Institute Advisory Council for a term to be determined by lot, Michael M. Valdez of Conroe (replacing Daniel Benavides who is deceased).

Appointments for June 23, 2005

Appointed to the Health Disparities Task Force for a term to expire February 1, 2006, Lydia "Trickey" Hernandez of Austin (replacing Adela Valdez whose term expired).

Appointed to the Health Disparities Task Force for a term to expire February 1, 2007, Martha A. Hargraves, Ph.D. of Houston (Dr. Hargraves is being reappointed).

Designating Dr. Martha Hargraves as chair of the Health Disparities Task Force for a term at the pleasure of the Governor. Dr. Hargraves is replacing Adela Valdez as chair. Dr. Valdez no longer serves on the board.

Appointments for June 24, 2005

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Senator Rodney Ellis of Houston.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Representative Dan Gattis of Georgetown.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Justice Barbara P. Hervey of San Antonio.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Judge Wayne F. Salvant of Arlington.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Judge Cynthia Stevens Kent of Tyler.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Barry L. Macha of Wichita Falls.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Robert J. Lerma of Brownsville.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Patricia A. Day of Dallas.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Dale Pat Campbell, Jr. of Lubbock (Mr. Campbell will serve as chair of the council).

Ex-Officio Members:

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, J. R. Ron Urbanovsky of Austin.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Thomas A. Davis, Jr. of Austin.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Charles E. Cantu of San Antonio.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, William P. Allison of Austin.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, David R. Dow of Houston.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Senator John Whitmire of Austin.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Ken Nicolas of Austin.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Robert N. Kepple of Austin.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Representative Jerry Madden of Austin.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Scott J. Atlas of Houston.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, James D. Bethke of Austin.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Richard A. Roman of El Paso.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, James McLaughlin, Jr. of Elgin.

Rick Perry, Governor

TRD-200502650

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0349-GA

Requestor:

Mr. Wayne Thorburn, Administrator

Texas Real Estate Commission

Post Office Box 12188

Austin, Texas 78711-2188

Re: Whether certain committees and subcommittees of the Texas Real Estate Commission may conduct public meetings by telephone conference call under the Open Meetings Act, chapter 551, Government Code (RQ-0349-GA)

Briefs requested by July 23, 2005

RQ-0350-GA

Requestor:

The Honorable Ken Armbrister

Chair, Natural Resources Committee

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether a school trustee whose term is expiring may vote for himself to fill a vacant position on the board of trustees (RQ-0350-GA)

Briefs requested by July 23, 2005

RQ-0351-GA

Requestor:

Ms. Sherri Sanders, Interim Executive Director

State Board of Dental Examiners

333 Guadalupe

Tower 3, Suite 800

Austin, Texas 78701-3942

Re: Construction of and constitutionality of a rider to the 2006-07 appropriation to the State Board of Dental Examiners (RQ-0351-GA)

Briefs requested by July 23, 2005

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200502666
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: June 28, 2005

♦ ♦ ♦

Opinion

Opinion No. GA-0336

The Honorable Mark E. Price

San Jacinto County Criminal District Attorney

1 State Highway 150, Room 21

Coldspring, Texas 77331

Re: Whether a justice of the peace may establish a standing pool of qualified volunteers to serve for jury duty (RQ-0306-GA)

S U M M A R Y

Chapter 62 of the Government Code provides broadly for summoning juries for trial in a justice court. Articles 45.027 and 45.028 of the Code of Criminal Procedure additionally provide for summoning a jury for a criminal trial in a justice court. For the trial of a criminal matter, a justice court may utilize the procedures in either chapter 62 of the Government Code or articles 45.027 and 45.028 of the Code of Criminal Procedure. While articles 45.027 and 45.028 do not prohibit utilizing a pool of volunteers for empaneling a venire, such a method must guard against a due process challenge that it systematically excludes a distinctive group in the community from the venire.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200502678
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: June 29, 2005

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 394. MEDIATION AND NEGOTIATED RULEMAKING

1 TAC §§394.1 - 394.7

The Texas Health and Human Services Commission (HHSC) proposes a new chapter concerning mediation and negotiated rulemaking, §§394.1 - 394.7.

Background and Purpose

The purpose of §394.1 and §394.2 is to define the terms employed in the chapter and to set forth HHSC's policy regarding mediation and negotiated rulemaking for all Texas health and human services (HHS) agencies. The purpose of §394.3 is to note that mediation is offered by the HHSC Office of Ombudsman, in contested cases, civil rights disputes and personnel actions. The roles of the dispute resolution administrator and the various dispute resolution coordinators are outlined in §394.4 and §394.5. The purpose of §394.6 is to clarify the mediation process, addressing issues such as confidentiality, costs, requirements of a mediation agreement and the voluntary nature of the process. The factors to consider in deciding whether an agency should consider employing negotiated rulemaking are set forth in §394.7.

Fiscal Note

Tom Suehs, Deputy Commissioner for Financial Services, has determined that for the first five-year period the proposed sections are in effect, there will be fiscal implications for state government or local governments as a result of enforcing or administering the sections. The effect on state government would be a cost of $131,878 for staff and mediation fees. HHSC has not found that there would be any fiscal implications for local governments as a result of enforcing or administering the system.

Public Benefit

Paul Leche, Special Counsel for Appeals, has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of Chapter 394 is that providers, employees and members of the public will have alternative dispute resolution procedures available to them in their dealings with HHS agencies. These procedures will allow for less formal and expensive methods of resolving internal and external disputes. The negotiated rulemaking provisions will offer HHS agencies the option of this unique method of attaining consensus on proposed rules.

Small and Micro-Business Impact Analysis

There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the sections, because the proposal increases flexibility for providers and does not add any new requirements for businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There is no anticipated effect on local employment in geographic areas affected by these sections.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a section of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

Under §2007.003(b) of the Government Code, HHSC has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, HHSC is not required to complete a takings impact assessment regarding these rules.

Public Comment

Questions about the content of this proposal may be directed to Paul Leche at (512) 487-3325 in HHSC's System Legal Services Office. Written comments on the proposal may be submitted to Paul Leche, Texas Health and Human Services Commission, Mail Code 1100, 4900 North Lamar Blvd., Austin, Texas 78759, within 30 days of publication in the *Texas Register*.

Statutory Authority

The new rules are proposed under Government Code §531.033, which authorizes the executive commissioner of HHSC to adopt rules necessary to carry out the commission's duties.

The new chapter affects Government Code §531.0161.

§394.1. Definitions.

For purposes of this chapter:

(1) "Mediation" means a method by which an impartial third party facilitates communication between the parties to promote reconciliation and settlement. It may include the use of early neutral evaluation in which an impartial third party first evaluates the strengths and weaknesses of each party's position in order to initiate mediation or any other form of informal assistance that facilitates the settlement of disputes.

(2) "Dispute" means any disagreement, complaint, contested case, or other circumstances in which the Commission authorizes the use of mediation. Disputes that may result in claims under Chapter 2260 of the Government Code are conducted in accordance with the rules in 1 TAC Chapter 392, relating to procurements by health and human services agencies.

(3) "Impartial third party" or "mediator" means a person who meets the qualifications and conditions under the Governmental Dispute Resolution Act (Chapter 2009 of the Government Code) for impartial third parties.

(4) "Commission" means the Texas Health and Human Service Commission.

(5) "HHS agencies" means the Commission and all health and human service agencies.

(6) "DR Administrator" means the Commission's dispute resolution manager.

(7) "DR Coordinator" means the dispute resolution coordinator for an area, program or agency.

(8) "Negotiated rulemaking" means a process authorized by Chapter 2008 of the Government Code in which agency officials and representatives of various affected interests meet in an attempt to develop a consensus regarding proposed rules.

(9) "Contested Case" has the meaning given in Government Code §2001.003.

§394.2. Policy.

(a) Mediation. It is the Commission's policy to encourage the voluntary use of appropriate alternative dispute resolution procedures at the earliest stage possible to assist in resolving internal and external disputes within the jurisdiction of the HHS agencies. Use of these procedures may resolve the entire issue or a portion of the issue in controversy.

(b) Negotiated Rulemaking. The Commission is committed to involving the public to the greatest degree possible in the development of its rules. One method to accomplish this is the use of negotiated rulemaking, which will be employed when appropriate.

§394.3. Circumstances in Which Mediation is Offered.

(a) An individual may request mediation through the Office of the Ombudsman in order to resolve disputes related to HHS agency programs, processes, staff or facilities. Mediation should be requested through the Office of the Ombudsman when circumstances require assistance beyond the normal health and human services procedures. The Office of the Ombudsman may use informal means to facilitate settlement of disputes prior to employing formal mediation processes.

(b) Employees of HHS agencies may request mediation of grievances or other workplace conflicts.

(c) Employees of HHS agencies may request mediation of internal civil rights or administrative complaints. The Civil Rights Office may use informal means to facilitate settlement of disputes prior to referral to the formal mediation process. The Civil Rights Office will coordinate referral for formal mediation as appropriate.

(d) Either party to a contested case involving an HHS agency may request mediation.

§394.4. Dispute Resolution Administrator.

(a) The Commission will designate a Dispute Resolution Administrator to perform the following functions:

(1) coordinate the implementation of the above policy;

(2) serve as a resource for any training needed to implement mediation or negotiated rulemaking;

(3) collect data concerning the effectiveness of these procedures as implemented by the HHS agencies; and

(4) receive requests for mediation and identify impartial third parties.

(b) In the performance of these functions, the DR Administrator will be responsible for:

(1) providing information about available mediation procedures to employees, regulated industry, and other potential users;

(2) arranging for training and education necessary to foster the implementation and use of mediation and negotiated rulemaking;

(3) establishing a process to collect data on mediation and to evaluate the mediation program; and

(4) recommending policies, rules or rule amendments to implement the policy.

§394.5. Dispute Resolution Coordinators.

Those programs and areas of the Commission that may be involved in mediation will designate a Dispute Resolution Coordinator to perform the following, part-time functions:

(1) receive requests for mediation;

(2) identify impartial third parties; and

(3) coordinate with and assist the DR Administrator.

§394.6. Mediation Process.

(a) Request for Mediation. Any request for the use of mediation to resolve a dispute must be made in writing and submitted to the appropriate Dispute Resolution Coordinator or Administrator except in contested cases, where the request must be made to the administrative law judge. The request must state the nature of the dispute and the parties involved. In determining whether mediation is appropriate in a particular case, the following factors may be considered:

(1) whether there are potential outcomes and solutions that are available only through mediation;

(2) whether there is a reasonable likelihood that mediation will result in an agreement;

(3) whether a candid and confidential discussion among the parties may help resolve the dispute;

(4) whether negotiations between the parties have been unsuccessful and could be improved with the assistance of an impartial third party; or

(5) whether the use of mediation may use fewer resources and take less time than other available procedures.

(b) Voluntary Use of Mediation. Mediation will be employed only if all parties to the dispute agree to its use. The only exceptions are that upper management in an HHS agency may require employees to participate in the management-directed mediation of a workplace conflict when no administrative complaint or grievance has been filed, and may require a supervisor to participate in the mediation of an administrative complaint filed by an employee under his supervision.

(c) Impartial Third Parties and Costs. For each case referred for mediation, the parties must mutually agree on an impartial third party. If the parties agree to use an impartial third party who charges for mediation services, the costs for the impartial third party will be borne by the HHS agency except in contested cases, in which the costs will be shared.

(d) Agreement. All parties participating in a mediation are expected to participate in good faith and with the authority to negotiate and reach an agreement. The decision to reach an agreement is voluntary for all parties. The resolution of a dispute reached as a result of mediation must be in writing, signed by all parties, and is enforceable in the same manner as any other written contract; provided, however, that any signed agreement that purports to bind an HHS agency must be ratified by the appropriate agency. Moreover, any such agreement may be subject to disclosure pursuant to Government Code §2009.054(c).

(e) Confidentiality. The confidentiality of the communications, records, and conduct in a mediation will be as provided under Government Code §2009.054, relating to the confidentiality of certain records and communications.

§394.7. Negotiated Rulemaking.

(a) Use of Negotiated Rulemaking. Before considering whether to propose the use of negotiated rulemaking, HHS agencies will consider whether, to a significant degree, its use would:

(1) be more likely to result in workable or reasonable regulations;

(2) offer opportunity for a creative solution to regulatory issues; or

(3) decrease the likelihood of litigation.

(b) The agency will make the final decision regarding the use of negotiated rulemaking.

(c) Process. HHS agencies will follow the process set forth in Chapter 2008 of the Government Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 23, 2005.

TRD-200502583
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 13. PRESCRIBED BURNING BOARD

CHAPTER 225. GENERAL PROVISIONS

4 TAC §225.1

The Prescribed Burning Board (the Board) proposes amendments to Title 4, Part 13, Chapter 225, §225.1, concerning general provisions for prescribed burning. The amendments are proposed to clarify that a Certified Prescribed Burn Manager must have the required liability insurance coverage, and to update the name of the state's natural resource agency and the Texas Agricultural Extension Service.

Jimmy Bush, Acting Assistant Commissioner for Pesticide Programs, has determined that for the five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section, as proposed.

Mr. Bush also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amended section will be that the public and affected persons will have clearer, updated information on the program. There will be no effect on micro-businesses, small or large businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposal may be submitted to Jimmy Bush, Acting Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Written comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*. In addition, the Board will take public comment on the proposal at its next scheduled meeting.

The amendments to §225.1 are proposed under the Texas Natural Resources Code, §153.046, which provides the Board with the authority to establish standards for prescribed burning and for certification and recertification of burn managers, and establish minimum insurance requirements for certified burn managers.

The Natural Resources Code, Chapter 153, is affected by the proposal.

§225.1. Definitions.

The following words and terms, when used in this chapter, Chapter 226 (relating to Standards for Certified Prescribed Burn Managers), Chapter 227 (relating to Certification, Recertification, and Renewal), Chapter 228 (relating to Continuing Education for Recertification/Renewal of Certification) and Chapter 229 (relating to Educational and Professional Requirements for Lead Instructors) of this title, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) Certified Prescribed Burn Manager--A person with ultimate authority, [~~and~~] responsibility, and liability insurance coverage as required by §226.4 of this title (relating to Insurance Requirements) [~~in conducting a prescribed burn~~], who has obtained certification under Chapter 227 of this title (relating to Certification, Recertification, and Renewal).

(6) - (12) (No change.)

(13) TCE [~~TAEX~~]--Texas Agricultural Extension Service

(14) - (16) (No change.)

(17) TCEQ--Texas Commission on Environmental Quality [~~TNRCC--Texas Natural Resource Conservation Commission~~]

(18) - (21) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2005.

TRD-200502634
Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 463-4075

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CHAPTER 226. STANDARDS FOR CERTIFIED PRESCRIBED BURN MANAGERS

4 TAC §§226.1 - 226.4, 226.6

The Prescribed Burning Board (the Board) proposes amendments to Title 4, Part 13, Chapter 226, §§226.1 - 226.4 and §226.6, concerning standards for certified prescribed burn managers. The amendments are proposed to clarify that a certified prescribe burn manager must carry or be covered by the required liability insurance coverage, and to update the name of the state's natural resource agency.

Jimmy Bush, Acting Assistant Commissioner for Pesticide Programs, has determined that for the five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, as proposed.

Mr. Bush also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amended sections will be that the public and affected persons will have clearer, updated information on the program. There will be no effect on micro-businesses, small or large businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposal may be submitted to Jimmy Bush, Acting Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Written comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*. In addition, the Board will take public comment on the proposal at its next scheduled meeting.

The amendments to §§226.1 - 226.4 and §226.6 are proposed under the Texas Natural Resources Code, §153.046, which provides the Board with the authority to establish standards for prescribed burning and for certification and recertification of burn managers, and establish minimum insurance requirements for certified burn managers.

The Natural Resources Code, Chapter 153, is affected by the proposal.

§226.1. Minimum Requirements.

(a) - (b) (No change.)

(c) The TCEQ [~~TNRCC~~] regulates outdoor burning in Texas. TCEQ [~~TNRCC~~] requirements may be found at Texas Administrative Code, Title 30, Chapter 111, Subchapter B (relating to Outdoor Burning).

§226.2. Personnel Requirements.

(a) In all cases covered by these rules, the presence of a certified prescribed burn manager with insurance coverage as required by §226.4 of this title (relating to Insurance Requirements), is required and enough people must be present to meet the personnel requirements of the written prescribed burn plan and provide adequate protection for the safety of persons and adjacent property.

(b) (No change.)

§226.3. Notification Requirements.

(a) A certified prescribed burn manager shall provide proof of current insurance coverage as required by §226.4 of this title (relating to Insurance Requirements) that is applicable to the prescribed burn, and current certification to the landowner or landowner's agent prior to conducting prescribed burn activities and have documentation on site during a prescribed burn.

(b) The TCEQ [~~TNRCC~~] regulates outdoor burning in Texas. TCEQ [~~TNRCC~~] notification requirements are found at Title 30, Chapter 111, Subchapter B, of this Code (relating to Outdoor Burning). There may be additional notification requirements for prescribed burns which may vary by county, and may include local ordinances.

(c) - (d) (No change.)

§226.4. Insurance Requirements.

The certified prescribed burn manager conducting a prescribed burn shall carry or be covered by:

(1) - (2) (No change.)

§226.6. Requirements for Certified Prescribed Burn Managers Conducting Burns During a County Burn Ban.

(a) All TCEQ [~~TNRCC~~], state and local requirements for open burning shall apply at all times, including local permitting requirements for burning during a county burn ban.

(b) - (c) (No change.)

(d) The county sheriff's office, TCEQ [~~TNRCC~~] and TFS regional fire coordinator must be notified prior to the burn and when the burn is complete.

(e) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2005.

TRD-200502635
Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 463-4075

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CHAPTER 227. CERTIFICATION, RECERTIFICATION, RENEWAL

The Prescribed Burning Board (the Board) proposes amendments to Title 4, Part 13, Chapter 227, §227.5 and §227.12, concerning certification and recertification of prescribed burn managers. The amendments are proposed to clarify proof of insurance requirements and to update the name of the state's natural resource agency and the Texas Agricultural Extension Service.

Jimmy Bush, acting assistant commissioner for pesticide programs, has determined that for the five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, as proposed.

Mr. Bush also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the sections will be that the public and affected persons will have clearer, updated information on the program. There will be no effect on micro-businesses, small or large businesses. There is no anticipated economic cost to persons who are required to comply with the sections, as proposed.

Comments on the proposal may be submitted to Jimmy Bush, Acting Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Written comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*. In addition, the Board will take public comment on the proposal at its next scheduled meeting.

SUBCHAPTER A. CERTIFICATION REQUIREMENTS

4 TAC §227.5

The amendment to §227.5 is proposed under the Texas Natural Resources Code, §153.046, which provides the Board with the authority to establish standards for prescribed burning and for certification and recertification of burn managers, and establish minimum insurance requirements for certified burn managers.

The Natural Resources Code, Chapter 153, is affected by the proposal.

§227.5. Proof of Insurance.

Documentation as required by Sec. 226.4 of this title (relating to Insurance Requirements) shall be provided to the Board annually to show proof of insurance on or before June 1st. Failure to provide timely proof of insurance shall render certification invalid. Documentation for any limiting scope of the applicable insurance must be provided. Any limitation on coverage shall be disclosed. The following is considered valid documentation:

(1) Certificate of insurance from insurance company; or

(2) any other documentation approved by the Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2005.

TRD-200502636
Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 463-4075

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SUBCHAPTER B. CONTINUING EDUCATION FOR RECERTIFICATION/RENEWAL OF CERTIFICATION

4 TAC §227.12

The amendment to §227.12 is proposed under the Texas Natural Resources Code, §153.046, which provides the Board with the authority to establish standards for prescribed burning and for certification and recertification of burn managers, and establish minimum insurance requirements for certified burn managers.

The Natural Resources Code, Chapter 153, is affected by the proposal.

§227.12. Board Approval, Assignment of Credits.

(a) - (c) (No change.)

(d) Prior approval shall not be required for prescribed burn manager recertification courses of up to three CEUs conducted by NRCS, TAES, TCE [~~TAEX~~], TAMU, TDA, TFS, TCEQ [~~TNRCC~~], TPWD, or TTU personnel, provided that all other requirements for course content and records are met. The Board may enter into a memorandum of agreement with NRCS, TAES, TCE [~~TAEX~~], TAMU, TDA, TFS, TCEQ [~~TNRCC~~], TPWD, TTU or others as approved by the Board, regarding the specific requirements for prescribed burn manager recertification.

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2005.

TRD-200502637
Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.17

The Texas State Securities Board proposes new §115.17, concerning anti-money laundering programs for dealers. The proposed rule would require securities dealers registered in Texas, who are not covered by the anti-money laundering provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 ("Patriot Act"), to develop and implement an anti-money laundering program. The Patriot Act does not cover securities dealers who are non-NASD (National Association of Securities Dealers, Inc.) members.

Micheal Northcutt, Director, Registration Division, and Benette Zivley, Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt and Mr. Zivley also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to prevent securities dealers from being used for money laundering or the financing of terrorist activities. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

In coordination with their review of the proposed requirements, the Board encourages firms to study the anti-money laundering template for small firms created by the National Association of Securities Administrators at http://tinyurl.com/ayfqx. The Board anticipates that use of the template will achieve compliance with the requirements without cost to the firms.

The Board solicits comments on the proposed rule and asks specifically for suggestions regarding minimal compliance procedures for anti-money laundering programs of small dealer firms.

Comments on the proposal to be considered by the Board should be submitted in writing within 60 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Article 581-1, et seq.

Statutes and codes affected: Texas Civil Statutes, Articles 581-13-1, 581-14, and 581-23-1.

§115.17. Anti-Money Laundering Programs for Dealers.

(a) This section only applies to a person who is registered or required to be registered with the Securities Commissioner as a dealer, but who is not a member of the National Association of Securities Dealers, Inc. (NASD).

(b) Each dealer shall develop and implement a written anti-money laundering program reasonably designed to prevent the dealer from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance. Each dealer's anti-money laundering program must be approved in writing by its board of directors or trustees, or if it does not have one, by its sole proprietor, general partner, or other persons who have similar functions. A dealer shall make its anti-money laundering program available for inspection by the Securities Commissioner.

(c) The anti-money laundering program shall at a minimum:

(1) establish and implement policies, procedures, and internal controls reasonably designed to prevent the dealer from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance;

(2) provide for independent testing for compliance to be conducted by the dealer's personnel or by a qualified outside party;

(3) designate a person or persons responsible for implementing and monitoring the operations and internal controls of the program; and

(4) provide ongoing training for appropriate persons.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 24, 2005.

TRD-200502614
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 305-8303

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CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §116.17

The Texas State Securities Board proposes new §116.17, concerning anti-money laundering programs for investment advisers. The proposed rule would require investment advisers registered in Texas, who are not covered by the anti-money laundering provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 ("Patriot Act"), to develop and implement an anti-money laundering program. The Patriot Act does not cover state registered investment advisers. The proposal would not apply to investment advisers that do not have assets under management, such as financial planners who provide investment advice but do not manage assets of their clients.

Micheal Northcutt, Director, Registration Division, and Benette Zivley, Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt and Mr. Zivley also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to prevent investment advisers from being used for money laundering or the financing of terrorist activities. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

In coordination with their review of the proposed requirements, the Board encourages firms to study the anti-money laundering template for small firms created by the National Association of Securities Administrators at http://tinyurl.com/ayfqx. The Board anticipates that use of the template will achieve compliance with the requirements without cost to the firms.

The Board solicits comments on the proposed rule and asks specifically for small investment advisers to address the following questions: (1) Should a minimum threshold be established for assets under management before an investment adviser is required to implement an anti-money laundering program? (2) What minimal requirements should be included in a compliance program for small investment advisers?

Comments on the proposal to be considered by the Board should be submitted in writing within 60 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Article 581-1, et seq.

Statutes and codes affected: Texas Civil Statutes, Articles 581-13-1, 581-14, and 581-23-1.

§116.17. Anti-Money Laundering Programs for Investment Advisers.

(a) This section only applies to a person who is registered or required to be registered with the Securities Commissioner as an investment adviser, and that has assets under management.

(b) Each investment adviser shall develop and implement a written anti-money laundering program reasonably designed to prevent the investment adviser from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance. Each investment adviser's anti- money laundering program must be approved in writing by its board of directors or trustees, or if it does not have one, by its sole proprietor, general partner, or other persons who have similar functions. An investment adviser shall make its anti-money laundering program available for inspection by the Securities Commissioner.

(c) The anti-money laundering program shall at a minimum:

(1) establish and implement policies, procedures, and internal controls reasonably designed to prevent the investment adviser from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance;

(2) provide for independent testing for compliance to be conducted by the investment adviser's personnel or by a qualified outside party;

(3) designate a person or persons responsible for implementing and monitoring the operations and internal controls of the program; and

(4) provide ongoing training for appropriate persons.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 24, 2005.

TRD-200502613
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 305-8303

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 321. PARI-MUTUEL WAGERING

SUBCHAPTER A. MUTUEL OPERATIONS

The Texas Racing Commission proposes amendments to §§321.1, 321.3, 321.13, 321.21, 321.33, and 321.35, relating to mutuel operations at pari-mutuel racetracks. The amendments are proposed in conjunction with the Commission's review of Chapter 321, conducted pursuant to Government Code, §2001.039. The Commission has determined preliminarily that the reason for adopting the above-referenced sections continues to exist, with the proposed amendments.

The sections proposed for amendment relate to definitions, the conduct of wagering, the pari-mutuel track report, prohibited wagers, and claims for payment. The proposals add a definition for ticketless electronic wagering, eliminate out-of-date language, clarify requirements regarding reports to the Commission, clarify the prohibition of accepting wagers via the internet, and conform the rules to current agency practice.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing the amendments.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the anticipated public benefit will be that the Commission's rules will be consistent with agency practice, be more easily understood by the persons required to follow the rules, and address advances in technology with respect to wagering while maintaining the integrity of wagering and enforcing applicable law. There are no costs to small businesses. There is no anticipated economic cost to an individual required to comply with the amendments as proposed. The amendments will have no effect on the state's agricultural, horse breeding, horse training, greyhound training, and greyhound breeding industries.

Comments on the proposal may be submitted on or before August 8, 2005, to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

DIVISION 1. GENERAL PROVISIONS

16 TAC §§321.1, 321.3, 321.13, 321.21

The amendments are proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races; and §11.04, which authorizes the Commission to adopt rules regarding the location of wagers and the use of telephones to wager.

The amendments implement Texas Civil Statutes, Article 179e.

§321.1. Definitions and General Provisions.

(a) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (15) (No change.)

(16) Ticketless Electronic Wagering (E-wagering)--a form of pari-mutuel wagering in which wagers are placed and cashed through an electronic ticketless account system operated through a licensed totalisator vendor in accordance with §11.04 of this Act. Wagers are automatically debited and credited to the account holder.

(17) [~~(16)~~] TIM--ticket-issuing machine.

(18) [~~(17)~~] TIM-to-Tote network--a wagering network consisting of a single central processing unit and the TIMs [~~TIM's~~] at any number of remote sites.

(19) [~~(18)~~] Totalisator system--a computer system that registers and computes the wagering and payoffs in pari-mutuel wagering.

(20) [~~(19)~~] Totalisator operator--the individual assigned to operate the totalisator system at a racetrack facility.

(21) [~~(20)~~] Tote-to-tote network--a wagering network in which each wagering location has a central processing unit.

(22) [~~(21)~~] User--a totalisator company employee authorized to use the totalisator system in the normal course of business.

(b) - (c) (No change.)

§321.3. Conduct of Wagering.

(a) (No change.)

(b) In conducting pari-mutuel wagering, an association shall use a totalisator system that:

(1) (No change.)

(2) is approved by the Commission [~~and the Comptroller~~].

(c) - (d) (No change.)

§321.13. Pari-Mutuel Track Report.

(a) Daily Pari-Mutuel Summary Report.

(1) - (3) (No change.)

(4) The report must contain, by each live and simulcast performance, the following:

(A) - (D) (No change.)

(E) all purses earned, broken out by source, such as live, simulcast, cross species, and export [~~type~~];

(F) - (H) (No change.)

(b) (No change.)

§321.21. Certain Wagers Prohibited.

(a) An association may not accept a wager made by mail, [~~or~~] by telephone, or by internet. A data communications link for common pooling purposes is not considered a wager for purposes of this section.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 23, 2005.

TRD-200502593
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 833-6699

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DIVISION 3. MUTUEL TICKETS AND VOUCHERS

16 TAC §321.33, §321.35

The amendments are proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races; and §11.04, which authorizes the Commission to adopt rules regarding the location of wagers and the use of telephones to wager.

The amendments implement Texas Civil Statutes, Article 179e.

§321.33. Expiration Date.

(a) - (c) (No change.)

[~~(d) Transition. For 2003 and 2004 only, mutuel tickets purchased on or after January 1, 2003 but before August 1, 2004, expire on September 29, 2004.~~]

§321.35. Claim for Payment.

(a) An association shall accept a claim for payment if the association has withheld payment or has refused to cash a pari-mutuel ticket or a voucher presented for payment. The claim must be made on a form prescribed by the association and signed by the claimant. The original of the claim shall be promptly forwarded to the Commission.

(b) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200502594
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 833-6699

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SUBCHAPTER B. TOTALISATOR REQUIREMENTS AND OPERATING ENVIRONMENT

The Texas Racing Commission proposes amendments to §§321.103, 321.105, 321.121, 321.123, 321.139, and 321.143, relating to totalisator requirements and operating environment at pari-mutuel racetracks. The amendments are proposed in conjunction with the Commission's review of Chapter 321, conducted pursuant to Government Code, §2001.039. The Commission has determined preliminarily that the reason for adopting the above-referenced sections continues to exist, with the proposed amendments.

The sections proposed for amendment relate to facility requirements, hardware requirements, general management requirements, personnel requirements, ad hoc reports, and logs. The proposals clarify the Commission's requirements relating to offsite totalisator equipment, add restrictions relating to ticketless electronic wagering, add a requirement that tote companies submit a business contingency plan, correct a typographical error, clarify that the executive secretary may determine which tote company employees must obtain a Commission license, clarify the deadline for filing an incident report, and incorporate provisions relating to e-wagering accounts in ad hoc reports and tote logs.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing the amendments.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the anticipated public benefit will be that the Commission's rules will be consistent with agency practice, be more easily understood by the persons required to follow the rules, and address advances in technology with respect to wagering while maintaining the integrity of wagering and enforcing applicable law. There may be a cost to totalisator companies required to prepare a business contingency plan. Due to the various organizational structures and management philosophies of the totalisator companies doing business at Texas racetracks, the cost of preparing a business contingency plan will vary widely and therefore, the Commission cannot estimate the cost. There is no anticipated economic cost to an individual required to comply with the amendments as proposed. The amendments will have no effect on the state's agricultural, horse breeding, horse training, greyhound training, and greyhound breeding industries.

Comments on the proposal may be submitted on or before August 8, 2005, to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

DIVISION 1. FACILITIES AND EQUIPMENT

16 TAC §321.103, §321.105

The amendments are proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races; and §11.04, which authorizes the Commission to adopt rules regarding the location of wagers and the use of telephones to wager.

The amendments implement Texas Civil Statutes, Article 179e.

§321.103. Facility Requirements.

(a) Totalisator Room. An association shall provide a totalisator room to house the main computing and communications equipment or [~~and~~] the operator's terminal at the association's facility, whichever is applicable. The room must include:

(1) - (6) (No change.)

(b) (No change.)

(c) Totalisator Room Security.

(1) The totalisator room housing the CPU or operator's terminal that processes wagers made at an association's facility must be secured at all times. Annually on a date established by the executive secretary, the association shall submit to the executive secretary for approval a security plan for the totalisator room housing the CPU or operator's terminal that processes wagers made at the association's facility. The security plan must include:

(A) - (B) (No change.)

(2) If the totalisator room housing the CPU or operator's terminal processing wagers made at the association's facility is located on property owned or controlled by the association, the association shall limit entry to the totalisator room to totalisator, association, and Commission personnel approved by the executive secretary. The association shall submit a list of the individuals to be approved for totalisator room access at least two weeks before the first day of each live race meeting and each time a personnel change necessitates a change to the list.

(3) If the totalisator room housing the CPU or operator's terminal processing wagers made at the association's facility is not located on property owned or controlled by the association, the totalisator company shall limit entry to the totalisator room in accordance with the totalisator company's policy. The association shall provide a copy of the totalisator company's policy regarding totalisator room access to the executive secretary.

§321.105. Hardware Requirements.

(a) - (f) (No change.).

(g) Ticket Issuing Machines.

(1) - (3) (No change.)

(4) A TIM may not access, alter, change, or manipulate the wagering database except to conduct the wagering or cashing functions necessary [~~for a teller~~] to serve the public.

(h) Ticketless Electronic Wagering (E-wagering). An association may not use E-wagering devices unless approved by the executive secretary as required by Subchapter E of this Chapter.

(i) [~~(h)~~] Maintenance. A totalisator company shall provide sufficient preventative maintenance to a totalisator system to ensure the system hardware will provide a high degree of reliability. Maintenance must include testing the UPS for battery life and power stability.

(j) [~~(i)~~] Common Pooling.

(1) An association shall use a totalisator system that operates in either a Tote-to-Tote network or a TIM-to-Tote network. The totalisator system must, without regard to the location of the CPU:

(A) meet the requirements of this chapter;

(B) comply with the Rules;

(C) use the current version of Inter-Tote Systems Protocol recognized by the ARCI Tote Standards Committee; and

(D) uses the current version of Standardized Track codes recognized by the ARCI Tote Standards Committee.

(2) An association may common pool if all equipment used is of an approved type and in an approved location.

(3) The host racetrack for which a common pool is created must also provide a totalisator system that:

(A) directs each totalisator system involved with the common pool regarding the pools offered, live and scratched race animals, common pool totals, network odds and probable payout, start and stop wagering commands, official orders of finish, deduction and payout calculations; and

(B) produces reports showing the amount wagered on each race animal and pool from each site, in accordance with the current Inter-Tote Systems Protocol.

(4) A totalisator company must have a disaster recovery plan to allow an association to continue to conduct pari-mutuel wagering in the event of a disaster at the CPU's location.

(k) [~~(j)~~] Emergency Procedures.

(1) The totalisator system must be supported by an uninterruptible power supply (UPS) as described in subsection (f) of this section.

(2) A totalisator company must have emergency procedures to address a totalisator system failure. The procedures will

apply whether the system is operating as a stand-alone wagering site for separate pool wagering or as a satellite in a common pool network.

(3) In a Tote-to-Tote network, if system failure occurs at either the remote site or the host, the pari-mutuel auditor and the network's mutuel and system managers shall establish the pools for the unaffected sites. The failure site shall cease wagering. The pari-mutuel auditor shall then determine when the failed pari-mutuel system may resume operation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 23, 2005.

TRD-200502595
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 833-6699

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DIVISION 2. OPERATIONAL REQUIREMENTS

16 TAC §321.121, §321.123

The amendments are proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races; and §11.04, which authorizes the Commission to adopt rules regarding the location of wagers and the use of telephones to wager.

The amendments implement Texas Civil Statutes, Article 179e.

§321.121. General Management Requirements.

(a) - (c) (No change.)

(d) Business Contingency Plan. A totalisator company must submit and obtain executive secretary approval for a business contingency plan that addresses the company's ability to continue or resume operations if a catastrophic event disrupts normal business operations. The plan must be submitted annually on a date established by the executive secretary. The executive secretary may specify the types of occurrences that the plan must address.

(e) A totalisator company is subject to licensing, inspection, and regulation by the Commission to ensure the integrity of the information obtained by use of its software and equipment and employees.

§321.123. Personnel Requirements.

(a) General Requirements.

(1) (No change.)

(2) The totalisator company must have job descriptions containing the experience, education, and organization training requirements for each of the following totalisator positions:

(A) - (C) (No change.)

(D) totalisator operator; and

(E) technicians.[; and]

(3) - (4) (No change.)

(5) The executive secretary may determine which totalisator employees must be licensed.

(6) [(5)] With each license application, a totalisator company must include a list of all certified totalisator personnel assigned to work in Texas. The list must indicate the position for which each person is qualified. If a new employee is assigned to work in Texas, the totalisator company must update the list of certified personnel and provide it to the executive secretary.

(7) [(6)] A totalisator company employee may not hold a position of programmer and totalisator operator simultaneously unless approved by the executive secretary.

(8) [(7)] A totalisator company employee is prohibited from wagering in Texas while on duty.

(b) (No change.)

(c) Totalisator operator. A totalisator operator shall:

(1) - (7) (No change.)

(8) provide to the pari-mutuel auditor an incident report, no later than 48 hours after the time of the incident, addressing [detailing] each unusual occurrence during totalisator system operations including a description of the probable cause of the occurrence and the corrective action taken;

(9) - (10) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 23, 2005.

TRD-200502596
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 833-6699

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DIVISION 3. REPORTING AND LOG REQUIREMENTS

16 TAC §321.139, §321.143

The amendments are proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races; and §11.04, which authorizes the Commission to adopt rules regarding the location of wagers and the use of telephones to wager.

The amendments implement Texas Civil Statutes, Article 179e.

§321.139. Ad Hoc Reports.

When requested by the pari-mutuel auditor or executive secretary, the totalisator operator shall produce the following reports:

(1) - (6) (No change.)

(7) a Canceled Tickets Report, for a performance or race, showing each ticket canceled that day in the form of the Ticket History Report, the identity of the TIM that cashed the ticket, and an indication as to whether the ticket was cashed using a manual keyboard entry or an automatic machine read; [~~and~~]

(8) a Network Balance Report summarizing the activity and liabilities for each site within a Tote-to-Tote network; and

(9) an Account Activity Report showing the following information for each E-wagering account:

(A) the unique account number;

(B) the date and time of each transaction;

(C) the location of each wager;

(D) the amount of each transaction;

(E) the type of pool, animal number, and amount of each wager;

(F) the account balance; and

(G) the account holders name.

§321.143. Logs.

(a) On-Line Logs. The totalisator system must produce various daily on-line logs. The totalisator operator shall provide a printed copy of a daily log to the pari-mutuel auditor on request. The totalisator system must produce the following logs:

(1) - (2) (No change.)

(3) a User Terminal Log showing the time of day of each entry for:

(A) (No change.)

(B) each TIM operated during a performance:

(i) (No change.)

(ii) each instance of loss/restoration of communication and the TIM; [~~and~~]

(4) a System Error Log showing the date and time of each error; and[~~.~~]

(5) an Account Activity Log showing the following information for each E-wagering account:

(A) the unique account number;

(B) the date and time of each transaction;

(C) the location of each wager;

(D) the amount of each transaction;

(E) the type of pool, animal number, and amount of each wager;

(F) the account balance; and

(G) the account holders name.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paula C. Flowerday
Executive Secretary
Texas Racing Commission
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For further information, please call: (512) 833-6699

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SUBCHAPTER C. REGULATION OF LIVE WAGERING
DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

16 TAC §§321.312, 321.313, 321.315

The Texas Racing Commission proposes amendments to §§321.312, 321.313, and 321.315, relating to the regulation of wagering on races conducted live in Texas. The amendments are proposed in conjunction with the Commission's review of Chapter 321, conducted pursuant to Government Code, §2001.039. The Commission has determined preliminarily that the reason for adopting the above-referenced sections continues to exist, with the proposed amendments.

The sections proposed for amendment relate to the pick (n) pool, the select three, four, or five pool, and the tri-superfecta pool. The proposals correct a typographical error, provide a protocol for determining which animals will be substituted for a scratched animal, and rearrange the order of subsections relating to the distribution of the tri-superfecta pool on a mandatory payout day.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing the amendments.

Ms. Flowerday has also determined that for each of the first five years the amendments are in effect the anticipated public benefit will be that the Commission's rules will be consistent with agency practice, be more easily understood by the persons required to follow the rules, and address advances in technology with respect to wagering while maintaining the integrity of wagering and enforcing applicable law. There is no cost to a small business required to comply with the amendments. There is no anticipated economic cost to an individual required to comply with the amendments as proposed. The amendments will have no effect on the state's agricultural, horse breeding, horse training, greyhound training, and greyhound breeding industries.

Comments on the proposal may be submitted on or before August 8, 2005, to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races; and §11.04, which authorizes the Commission to adopt

rules regarding the location of wagers and the use of telephones to wager.

The amendments implement Texas Civil Statutes, Article 179e.

§321.312. Pick (N).

(a) - (j) (No change.)

(k) If a pick (n) ticket designates a selection and the selection is scratched or otherwise prevented from racing, the favorite, as determined by the largest amount wagered in the win pool at the start of the race, will be substituted for the nonstarting selection for all purposes, including mutuel pool calculations and payoffs to the public. If there are two or more [~~identical~~] favorites in the win pool, both favorites will be substituted for the nonstarting selection.

(l) - (q) (No change.)

§321.313. Select Three, Four, or Five.

(a) - (h) (No change.)

(i) If a selection on a select three, four, or five ticket in one or more of the races is scratched or determined by the stewards or racing judges to be a nonstarter in the race, the actual favorite, as shown by the largest amount wagered in the win pool at the time of the start of the race, will be substituted for the non starting selection for all purposes, including pool calculations and payoffs. If there are two or more favorites in the win pool, both favorites will be substituted for the non-starting selection.

(j) - (k) (No change.)

§321.315. Tri-Superfecta.

(a) - (c) (No change.)

(d) In the first tri-superfecta race [~~ace~~] only, the first-half tri-superfecta pool shall be distributed according to the following precedence, based upon the official order of finish for the first tri-superfecta race:

(1) - (8) (No change.)

(e) - (q) (No change.)

(r) Distribution on Mandatory Payout.

(1) Notwithstanding subsections (e) and (t) of this section, on the last performance of a race meet or a designated mandatory payout performance, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in the first tri-superfecta race in the following order:

(A) As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then

(B) As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then

(C) As a single price pool to those whose combination included, in correct sequence, the first and third betting interests; but if there are no such wagers, then

(D) As a single price pool to those whose combination correctly selected the first-place betting interest; but if there are no such wagers, then

(E) As a single price pool to those whose combination included, in correct sequence, the second and third betting interests; but if there are no such wagers, then

(F) As a single price pool to those whose combination correctly selected the second-place betting interest; but if there are no such wagers, then

(G) As a single price pool to those whose combination correctly selected the third-place betting interest.

(2) Notwithstanding subsections (e) and (t) of this section, on the last performance of a race meeting or a designated mandatory payout performance, if there are no wagers selecting the finishers in the order described in paragraph (1) of this subsection and there is a carryover, all first-half tickets are considered winners and the tri-superfecta pool for that performance and the tri-superfecta carryover shall be distributed equally among them.

(3) Notwithstanding subsections (e) and (t) of this section, on the last performance of a race meeting or a designated mandatory payout performance, if there are no wagers selecting the finishers in the order described in paragraph (1) of this subsection and there is no carryover, the tri-superfecta shall be canceled and the entire tri-superfecta pool shall be refunded.

(s) [~~(r)~~] Notwithstanding subsections (f) and (t) of this section, on the last performance of a race meeting or on a designated mandatory payout performance, the following precedence will be followed in determining winning tickets for the second-half of the tri-superfecta:

(1) As a single price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then

(2) As a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then

(3) As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then

(4) As a single price pool to those whose combination correctly selected the first-place betting interest; but if there are no such wagers, then

(5) As a single price pool to those whose combination included, in correct sequence, the second-place betting interests; but if there are no such wagers, then

(6) As a single price pool to those whose combination correctly selected the third-place betting interest; but if there are no such wagers, then

(7) As a single price pool to those whose combination correctly selected the fourth-place betting interest; but if there are no such wagers, then

(8) As a single price pool to holders of valid exchange tickets; but if there are no such persons, then

(9) As a single price pool to holders of outstanding first-half winning tickets.

[~~(s) Distribution on Mandatory Payout.~~]

[~~(1) Notwithstanding subsections (e) and (t) of this section, on the last performance of a race meet or a designated mandatory payout performance, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in the first tri-superfecta race in the following order:~~]

[~~(A) As a single price pool to those whose combination finished in correct sequence as the first three betting interests; but if there are no such wagers, then~~]

~~[(B) As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then]~~

~~[(C) As a single price pool to those whose combination included, in correct sequence, the first and third betting interests; but if there are no such wagers, then]~~

~~[(D) As a single price pool to those whose combination correctly selected the first-place betting interest; but if there are no such wagers, then]~~

~~[(E) As a single price pool to those whose combination included, in correct sequence, the second and third betting interests; but if there are no such wagers, then]~~

~~[(F) As a single price pool to those whose combination correctly selected the second-place betting interest; but if there are no such wagers, then]~~

~~[(G) As a single price pool to those whose combination correctly selected the third-place betting interest.]~~

~~[(2) Notwithstanding subsections (e) and (t) of this section, on the last performance of a race meeting or a designated mandatory payout performance, if there are no wagers selecting the finishers in the order described in Paragraph (1) of this subsection and there is a carryover, all first-half tickets are considered winners and the tri-superfecta pool for that performance and the tri-superfecta carryover shall be distributed equally among them.]~~

~~[(3) Notwithstanding subsections (e) and (t) of this section, on the last performance of a race meeting or a designated mandatory payout performance, if there are no wagers selecting the finishers in the order described in Paragraph (1) of this subsection and there is no carryover, the tri-superfecta shall be canceled and the entire tri-superfecta pool shall be refunded.]~~

(t) - (w) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paula C. Flowerday
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Texas Racing Commission
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SUBCHAPTER E. TICKETLESS ELECTRONIC WAGERING

The Texas Racing Commission proposes new §§321.601, 321.603, 321.605, 321.607, 321.609, 321.621, 321.623, 321.625, and 321.627, relating to wagering on horse and greyhound races at Texas racetracks via an electronic wagering system. The new sections are proposed in conjunction with the Commission's review of Chapter 321, conducted pursuant to Government Code, §2001.039. The Commission has determined preliminarily that the reason for adopting Chapter 321 continues to exist, with the proposed new sections.

The new sections provide procedures and restrictions on the conduct of ticketless electronic wagering at Texas racetracks. The new sections provide for an e-wagering plan to be submitted and approved by the agency, restrictions on e-wagering to ensure strict compliance with application wagering laws, the cancellation of e-wagers, and the suspension or termination of e-wagering.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Ms. Flowerday has also determined that for each of the first five years the new sections are in effect the anticipated public benefit will be that the Commission's rules will address advances in technology with respect to wagering while maintaining the integrity of wagering and enforcing applicable law. There may be a minimal cost to a pari-mutuel racetrack associated with preparing and submitting the electronic wagering plan. Due to the various organizational structures and management philosophies of the racetracks, the cost of preparing an e-wagering plan will vary widely and therefore, the Commission cannot estimate the cost. There is no anticipated economic cost to an individual required to comply with the sections as proposed. The sections will have no effect on the state's agricultural, horse breeding, horse training, greyhound training, and greyhound breeding industries.

Comments on the proposal may be submitted on or before August 8, 2005, to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

DIVISION 1. CONDUCT OF E-WAGERING

16 TAC §§321.601, 321.603, 321.605, 321.607, 321.609

The new sections are proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races; and §11.04, which authorizes the Commission to adopt rules regarding the location of wagers and the use of telephones to wager.

The new sections implement Texas Civil Statutes, Article 179e.

§321.601. Purpose.

(a) The Commission recognizes that the technology for placing wagers is ever changing. The Commission adopts these rules as guidelines to conduct E-wagering that maintains the integrity of pari-mutuel wagering.

(b) E-wagering may be conducted only within the enclosure of an association.

(c) Only persons meeting the age restriction in §321.17 of this title (relating to Activities by Minors Restricted) may participate in E-wagering. E-wagers must be made in person.

§321.603. Authorization for E-Wagering.

An association may not conduct E-wagering unless approved by the executive secretary.

§321.605. E-Wagering Plan.

(a) To be approved to conduct E-wagering, an association must submit a plan to the executive secretary. The plan must include:

(1) the procedures for opening an account;

(2) the procedures for establishing identity of account holder;

(3) the procedures for making deposits to the account;

(4) the procedures for making withdrawals from the account;

(5) the procedures for closing an account; and

(6) a description of the totalisator system and E-wagering access system.

(b) The executive secretary may approve a plan to conduct E-wagering if the executive secretary determines that the association's plan meets the requirements of this section and does not conflict with the Rules or the Act.

§321.607. E-Wagering Account Restrictions.

(a) The mutuel manager of an association shall establish and manage E-wagering within an association's enclosure.

(b) The making and acceptance of wagers over the communications facility known as the "Internet" or "telephone" is prohibited.

(c) An association may accept deposits to an account only in the form of cash, cashier's check, money order, or other method determined by the executive secretary to be a cash equivalent.

(d) The association may not accept wagers in an amount that exceeds the account balance.

(e) An account holder must be at least 21 years of age.

(f) An account holder is responsible for all activity associated with his or her account.

(g) An association may use E-wagering devices only if the devices are connected to the totalisator system.

§321.609. Testing E-Wagering.

An association's E-wagering system is subject to testing and inspection by the Commission. All forms of access to an account, including hardware used directly by the account holder for E-wagering are subject to testing and inspection by the Commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paula C. Flowerday
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Texas Racing Commission
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DIVISION 2. OPERATIONAL REQUIREMENTS

16 TAC §§321.621, 321.623, 321.625, 321.627

The new sections are proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races; and §11.04, which authorizes the Commission to adopt rules regarding the location of wagers and the use of telephones to wager.

The new sections implement Texas Civil Statutes, Article 179e.

§321.621. Ticketless Electronic Wagering Hardware.

An E-wagering device must be configured for loss of signal when removed from an association's enclosure.

§321.623. Cancellation of E-Wagers.

An account holder may cancel an E-wager only as provided by §321.43 of this title, (relating to Cancellation of Win Wagers.) A statement approved by the executive secretary must appear in or accompany the account wagering application form advising the wagering account applicant of this requirement.

§321.625. Discrepancy/Dispute Resolution.

If an account holder believes a discrepancy exists in his or her account, the account holder may file a claim for payment with the executive secretary. The executive secretary shall investigate all claims for payment and the executive secretary's determination is final.

§321.627. Suspension or Termination of E-Wagering.

(a) The executive secretary may issue a cease and desist order terminating the E-wagering system if the executive secretary determines that the operation of the E-wagering system:

(1) violates the Rules, the Act, or other state law;

(2) is detrimental to the integrity of pari-mutuel wagering; or

(3) does not comply with the requirements of an E-wagering system as defined in this Act or a Commission rule.

(b) The executive secretary may deny, suspend, or terminate an individual's E-wagering account if the executive secretary determines the activities on the account:

(1) violate the Rules, the Act, or other state law; or

(2) are inconsistent with maintaining the integrity of pari-mutuel wagering.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Texas Racing Commission
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TITLE 22. EXAMINING BOARDS

PART 25. TEXAS STRUCTURAL PEST CONTROL BOARD

CHAPTER 593. LICENSES

22 TAC §593.6

The Texas Structural Pest Control Board proposes an amendment to §593.6, concerning License Expiration and Renewal. The proposal will clarify this regulation and also clarify how statutorily mandated late fees are assessed.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the amended section. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the amended section will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the amended section will be in effect.

There is no cost of compliance for individuals since the proposal does not affect them.

There will be no cost of compliance for small businesses since the proposal does not affect them.

There is no cost comparison for small or large businesses since they will not be affected by the proposal.

Mr. Burnett has also determined that for each year of the first five years the amendment as proposed is in effect, the public benefits anticipated as a result of enforcing the amended section will be that non-commercial applicator licensing requirements will be more consistent with commercial applicator requirements. There will be less ambiguity in the rules with these changes. There are no economic costs to individuals who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Structural Pest Control Board, P.O. Box 1927, Austin, Texas 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§593.6. License Expiration and Renewal.

(a) - (c) (No change.)

(d) Licenses must be renewed by submitting a license renewal [~~an~~] application to the Board, paying the required fee, and meeting any additional requirements of the Board under Section 593.3 [~~of this title~~] ([~~relating to~~] Insurance Requirements) and subsection (h) of this section, 30 days prior to the license expiration date. Submitting a renewal application [~~Renewal applications received~~] after the license expiration date makes the license renewal application [~~are~~] subject to [~~the~~] late fees prescribed in the Texas Structural Pest Control Act, Section 1951.310. A license renewal [~~An~~] application is not considered to be submitted unless it is entirely completed and [~~in substantially~~] correct, submitted [~~form~~] with the correct fees, and satisfying any additional requirements determined by Board rules. Applicants who apply for a [~~Incomplete~~] renewal license more than 60 days after [~~applications received on or before~~] the license expiration date will be required to be reexamined by the Board to obtain a license [~~may also be subject to late fees~~].

(e) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dale Burnett
Executive Director
Texas Structural Pest Control Board
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For further information, please call: (512) 305-8270

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22 TAC §593.7

The Texas Structural Pest Control Board proposes an amendment to §593.7, concerning Fees. The proposal will raise fees to cover the increased appropriations given to the agency by the Texas Legislature.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government, however, there will be an estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect.

The cost of compliance with the rule for small businesses will be an increase of $5.00, from $175.00 to $180.00 for renewal of a business license. The costs for examinations will increase from $40.00 to $50.00. Additional costs will depend upon the number of employees who apply to take examinations. The cost comparison per employee is indeterminate for small or large businesses affected by the rule.

Dale Burnett, Executive Director, has determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be to meet the revenue requirements as set forth in the 79th edition of the Texas Legislature. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§593.7. Fees.

(a) Applicants, licensees and continuing education providers will be charged the following fees:

(1) $180 for an original business license;

(2) $180 [~~$175~~] for renewal of a business license;

(3) $85 for an original certified applicators license;

(4) $80 for renewal of a certified applicators license;

(5) $65 for an original technician license;

(6) $60 for an renewal of a technician license;

(7) $30 for duplicate business license, certified applicator license or technician license when the original has been lost or destroyed;

(8) $30 for reissuing a business license, certified applicators license or technician license due to a name change in the license;

(9) $50 [~~$40~~] for administering exams in each category;

(10) $37.50 for late renewal fee for applications received 1 day to 30 days after expiration date;

(11) $75 for late renewal fee for applications received 31 to 60 days after expiration date; and

(12) $40 for continuing education course.

(b) The following fees are based on increments of six (6) months.

(1) Business License Fees

(A) Issued for 1 day-6 months $92.50

(B) Renewed for 1 day-6 months $90.00 [~~$87.50~~]

(C) Issued for 7-12 months $180.00

(D) Renewal for 7-12 months $180.00 [~~$175.00~~]

(E) Issued for 13-18 months $262.50

(F) Renewal for 13-18 months $270.00 [~~$262.50~~]

(2) Certified Applicator License Fees

(A) Issued for 1 day-6 months $45.00

(B) Renewed for 1 day-6 months $40.00

(C) Issued for 7-12 months $85.00

(D) Renewal for 7-12 months $80.00

(E) Issued for 13-18 months $120.00

(F) Renewal for 13-18 months $125.00

(3) Technician License Fees

(A) Issued for 1 day-6 months $35.00

(B) Renewed for 1 day-6 months $30.00

(C) Issued for 7-12 months $65.00

(D) Renewal for 7-12 months $60.00

(E) Issued for 13-18 months $95.00

(F) Renewal for 13-18 months $90.00

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dale Burnett
Executive Director
Texas Structural Pest Control Board
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CHAPTER 599. TREATMENT STANDARDS

22 TAC §599.1

The Texas Structural Pest Control Board proposes an amendment to §599.1, concerning Termite Control. The proposal adds the words "devices" or "methods" to the word "products" for consistency throughout the section. The preferred spelling for U.S. Environmental Protection Agency is used. Finally, the word "instructions" is added to provide clarification on the use of methods, devices or products that do not require labeling.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect. There will be no cost of compliance for small businesses since the rule proposal does not affect them. There is no cost comparison for small or large businesses since they will not be affected by the rule proposal. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Dale Burnett, Executive Director, has determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule will be that all conditions relating to devices, products or methods not approved by the U.S. Environmental Protection Agency or the Texas Department of Agriculture will be covered. Criteria is also added for the evaluation of the devices, products or methods not approved by the U.S. Environmental Protection Agency or the Texas Department of Agriculture.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§599.1. Termite Control.

It is illegal to use materials, products, [~~and/or~~] methods or, devices for termite control that are not approved by the Board.

(1) Each pesticide product, method or device registered by the U.S. [~~United States~~] Environmental Protection Agency or [~~and/or~~] the Texas Department of Agriculture for termite control will be automatically approved by the Board as long as the product is applied or used according to the instructions on the label or labeling.

(2) Products, methods or devices not subject to U.S. [~~the~~] Environmental Protection Agency or Texas Department of Agriculture registration may be approved by the Board if the manufacturer submits a request for approval to the Board. The request must contain the following information:

(A) the name and address of the applicant and the name and address of the person whose name shall appear on the product, method or device label, if not the applicant's;

(B) the name of the product, method or device;

(C) a complete copy of all labeling and instructions to accompany the product, method or device and a statement of all claims to be made for it, including the directions for use;

(D) the complete formula of the product, including active and inert ingredients;

(E) a full description of the tests made and the results of the tests on which claims are based. These tests should be made by a recognized testing agency or institution and support, to the Board's satisfaction, the efficacy and safety of the product when used as directed; and

(F) all available toxicology information, including the antidote or effective treatment.

(3) The following criteria should be utilized when reviewing new products/methods/devices under paragraph (2) of this section.

(A) The Board staff shall review the request to determine if all of the required data listed in paragraph (2) of this section has been submitted.

(B) Establish a minimum of two Board agenda times for the review to approve/disapprove of new products, methods and devices.

(C) Efficacy data shall be part of the review and the data should support the efficacy claim. This must be in writing. There should be sufficient data to assure efficacy in Texas.

(D) A scientific advisory group could be used as needed for each new request and the group would forward the information to the Board staff for review. This would be a standing committee. More committee members could be added if additional expertise is needed for a particular review.

(E) A consumer disclosure document would be reviewed and approved by the Board.

(F) Testing should include a scientific method

(i) hypothesis;

(ii) comparisons between control and treatment;

(iii) replications; and

(iv) statistical analysis indicating level of efficacy.

(G) Products/methods/devices would receive specific approvals. For instance, if a product were approved for a full treatment, it does not mean it is also approved for a partial treatment.

(H) Although companies will make requests under this section, products/methods/devices would receive approvals, not companies. Patents and franchising are not a Board matter.

(I) The Board should make it clear to requesting parties and consumers that the Board can review an approved product again at future times as the need arises. The Board can also rescind approvals.

(J) There may be instances where Board members need to recuse themselves from voting on a particular product, method or device. For example, if a Board member was involved with the product/method/device research funding or is a shareholder with the product/method/device, the Board member would have to recuse themselves from making motions, voting or debating the matter with the Board. Guidance can be found in past Ethics Commission opinions or new Ethics Commission opinions can be requested.

(K) The Board shall determine if the product labeling or use directions are clear.

(L) The Board shall determine if adequate training is available for use of the product, device, or method.

(M) A risk assessment shall be made involving safety hazards and risks.

(N) The Board will review what experience other state regulators have reported, what other states have given approvals, and whether other states did any review at all. The requesting company shall provide this information. When the requesting party states that there is no information related to this segment, Board staff would make efforts of its own to determine if this kind of information exists.

(O) Is research available that indicates different results than that submitted by the requesting party? Is there adverse data resulting from claims or lawsuits? The requesting party should supply this data. When the requesting party states that there is none, Board staff would make efforts of its own to determine if this kind of information exists.

(P) If a product/method/device is approved for experimental testing before final Board approval/disapproval, staff do not have to be present at every testing, but will be present for some testing. However, the company shall provide the Board's Field Operations Division 24-hour notice before each experimental testing so that the Board staff would monitor the testing when it chooses to do so.

(Q) If the product/method/device is approved, the Board shall assign it to a licensing category. The termite category might be the most designated category but fumigation and other categories might also have some applicability.

(R) After the Board's review is finalized, Board staff will prepare a conclusion letter to the requesting party. The letter will precisely state the details of the approval or disapproval.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 24, 2005.

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Dale Burnett
Executive Director
Texas Structural Pest Control Board
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 305-8270

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22 TAC §599.2

The Texas Structural Pest Control Board proposes an amendment to §599.2, concerning Subterranean Termite Post Construction Treatments. The proposal reflects that federal law supercedes labeling. The words "label requirements" under §599.2(b) are added for clarification. The changes in §599.2(c) are made for grammatical clarification. The changes under §599.2(d) by using sticker reflects the current practice and terminology. The change under §599.2(e) is done to more accurately reflect the difference between monitoring and baiting systems. The last change under §599.2(f) adds the uniform requirement of keeping the records for two years.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year

period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect. There will be no cost of compliance for small businesses since the rule proposal does not affect them. There is no cost comparison for small or large businesses since they will not be affected by the rule proposal. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Dale Burnett, Executive Director, has determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule will be that the law is accurately stated by emphasizing the federal statutory labeling requirements. The other changes reflect the current industry practices on how to indicate that a treatment is performed and the proposed changes will reflect the differences in the new technology between monitoring and baiting stations.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§599.2. Subterranean Termite Post Construction Treatments.

(a) All pesticide applications must be made in accordance with the directions and precautions specified on the labeling of the pesticide used. Except, the applications of less than the labeled concentration may be applied if the volume of application is increased to achieve the intended rate of active ingredient per foot in the treatment zone.

(b) A treatment of less than the entire structure will be permitted to accommodate the customer's desires and to allow the treating company to perform the job in a manner prescribed by their professional evaluation and label requirements.

(c) All treatments must strictly adhere to the procedures outlined in the disclosure statement required in §599.4 of this title (relating to Termite Treatment Disclosure Documents). A [~~Except, that~~] deviation will be permitted when unexpected circumstances occur necessitating a change in the treatment and the certified applicator responsible for the treatment provides the customer with [~~issues~~] a written addendum to the contract or disclosure documents at the completion of the treatment [~~prior to final billing for the jobs~~].

(d) Upon completion of a termite treatment, other than a bait treatment, the company responsible for providing the treatment must [~~shall~~] leave a durable sticker [~~sign~~] on the wall adjacent to the water heater, electric breaker box, beneath the kitchen sink or in the interior bath trap access giving the name and address of the licensee, product, method or device used, the final date of the treatment, and a statement that the notice should not be removed.

(e) For a termite treatment using a bait product, the requirement to place a durable sticker [~~sign~~] applies at the time of the first placement of bait systems that include a pesticide [~~baits and/or monitoring stations~~].

(f) The business license holder or, in the case of the certified noncommercial applicator, the applicator must keep and maintain a correct and accurate copy of the Termite Treatment Disclosure Documents for a period of two (2) years.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 24, 2005.

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Dale Burnett
Executive Director
Texas Structural Pest Control Board
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For further information, please call: (512) 305-8270

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22 TAC §599.3

The Texas Structural Pest Control Board proposes an amendment to §599.3, concerning Subterranean Termite Pre-Construction Treatments. The proposal reflects that termiticide labels reflect a range of rates. Since federal law is the standard, the changes will now reflect federal law. The change on paperwork reflect the need to reduce paperwork and to reflect the federal law requirements. Borates application rates are also reflected in these changes. Square foot is now replaced with appropriate unit of measurement to again comply with the federal law requirements. Email is now added as a notification method. Finally, more discretion is added for assessing penalties for minor violations of the notification requirement.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect. There will be no cost of compliance for small businesses since the rule proposal does not affect them. There is no cost comparison for small or large businesses since they will not be affected by the rule proposal. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Dale Burnett, Executive Director, has determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule will be that the law is accurately stated by reflecting the different label application rates approved under federal law. The other changes reflect new technologies and are consistent with the federal law requirements. The industry will also benefit from being able to email notification to the Board.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§599.3. Subterranean Termite Pre-Construction Treatments.

(a) This section does not apply to subsections (b) - (f) of this section [~~baits or baiting systems~~].

(b) All pesticide liquid applications must be made by using the application rates [~~rate~~] and methods and by following the precautionary statements on the labeling of the pesticide being used. [~~Treatments using less than label recommended concentrations at higher volume or higher concentrations at reduced volume applications are prohibited for pre-construction treatments.~~]

(c) For a full treatment, the entire structure must [~~shall~~] be treated to provide a continuous horizontal and vertical barrier as described on the pesticide label including the posting of a treatment sticker and the final treatment to be performed within thirty (30) days of notification of completion of landscaping or one year from the date of completion of construction, whichever comes first. However [~~Except~~], when construction has proceeded to the point that all areas cannot be treated before the company providing the treatment is called to perform the application, a partial treatment will be permitted if the owner of the structure or the person in charge of the construction and the certified applicator for the pest control company sign a statement attesting to the construction conditions, and attach it to the contract with an amended diagram or blueprint or building plat showing the exact areas to be treated and send copies to the owner of the property [~~and the Structural Pest Control Board~~] within seven (7) days of the application. A copy of the contract with an amended diagram or blueprint or building plat showing the exact areas to be treated must be made available to the Board upon the Board's request. A partial treatment will also be permitted if allowed by label directions and if the licensee proposing the treatment issues a Termite Treatment Disclosure Document prior to the treatment.

(d) In order to comply with subsection (c) of this section, it will be necessary to return to the pretreatment site after the slab has been poured and/or piers and support beams have been placed to complete the treatment for the vertical barrier.

(e) Treatment of the wood framing must be disclosed as a partial treatment. [~~Notice of all pre-construction treatments with contracts requiring treatment of a structure other than a single family dwelling must be called or faxed in to the Structural Pest Control Board between the hours of 6:00 a.m. and 9:00 p.m. using the specified telephone or fax number at least four (4), and no more than twenty four (24) hours prior to termiticide application. The licensee must provide address and site location, type of treatment (partial or full), date and time of treatment, approximate square footage under contract and the name and physical address of the business licensee. If the treatment is cancelled, notice of cancellation must be sent using the specified telephone or fax number within one hour of the time the licensee learns of the cancellation.~~]

(f) Notice of all pre-construction treatments with contracts requiring treatment of a structure other than a single family dwelling must be called, emailed or faxed in to the Texas Structural Pest Control Board between the hours of 6:00 a.m. and 9:00 p.m. using the specified telephone or fax number at least four (4), and no more than twenty four (24) hours prior to termiticide application. The licensee must provide address and site location, type of treatment (partial or full), date and time of treatment, appropriate unit of measurement under contract and the name and physical address of the business licensee. If the treatment is cancelled, notice of cancellation must be sent using the specified telephone, e-mail address or fax number within one hour of the time the licensee learns of the cancellation. [~~For all commercial pre-construction treatments, the licensee must maintain records of square footage treated per application site, amount of termiticide used per application site, rate at which termiticide is mixed for each application site, number of application tanks which were in use for the treatment and the capacity, in gallons, of each application tank, and the start and stop time for the treatment. A baiting system may be used in lieu of a pre-construction treatment if applied within thirty (30) days of notification of completion of landscaping. If a physical device is used, the square footage of the physical device will be recorded and a diagram describing the installation will be provided.~~]

(g) For all commercial pre-construction treatments, the licensee must maintain records of the appropriate unit of measurement treated per application site, amount of termiticide used per application site, rate at which termiticide is mixed for each application site, number of application tanks which were in use for the treatment, the capacity, in gallons, of each application tank, and the start and stop time for the treatment. The business license holder or, in the case of the certified noncommercial applicator, the applicator must keep and maintain a correct and accurate copy of the pre-construction treatment records for a period of two (2) years. A baiting system may be used in lieu of a pre-construction treatment if applied within thirty (30) days of notification of completion of landscaping. If a physical device is used, the appropriate unit of measurement of the physical device must be recorded and a diagram describing the installation must be provided. [~~Any violation of this section will result in an administrative penalty of not less than $3000 per violation and is considered a base penalty 3.~~]

(h) Any violation of this section may result in an administrative penalty of not less than $3000 per violation and is considered a base penalty 3.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 24, 2005.

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Dale Burnett
Executive Director
Texas Structural Pest Control Board
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For further information, please call: (512) 305-8270

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22 TAC §599.4

The Texas Structural Pest Control Board proposes an amendment to §599.4, concerning Termite Treatment Disclosure Documents. The proposal clarifies by adding the word "written" to the word estimate. Other changes were made for grammatical reasons. The federal law standard of appropriate unit of measurement is incorporated into the regulation. Wording was also added to reflect the industry practice that a different company may treat under the warranty. Changes were also added to the definition of a full treatment. The SPCB/D-2 form is also revised and changed to SPCB/D-3 form with the clarifications on that document.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect. There will be no cost of compliance for small businesses since the rule proposal does not affect them. There is no cost comparison for small or large businesses since they will not be affected by the rule proposal. There is no anticipated

economic cost to individuals who are required to comply with the rule as proposed.

Dale Burnett, Executive Director, has determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule will be that the regulation will specify when a written estimate must be provided to the customer. The other changes will reflect the status of federal law and incorporate new technologies into the regulation.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§599.4. Termite Treatment Disclosure Documents.

(a) As part of each written estimate submitted and before conducting an initial termite treatment for a customer, the pest control company proposing the treatment must [~~shall~~] present the prospective customer or designee with the disclosure documents [~~statement~~]. Verbal estimates may be provided to customers to advise of a general range of treatment costs, but a written estimate must be provided before offering a contract and beginning a treatment.

(b) Each termite treatment disclosure document must [~~shall~~] include, but is not limited to:

(1) a diagram or blueprint or building plat and description of the structure or structures to be treated include the following:

(A) the address or physical location;

(B) approximate perimeter measurements of the structures as accurately as practical;

(C) areas of active or previous [~~known~~] termite activity;

(D) areas to be treated;

(2) a label for any pesticide recommended or used. If a physical device is used, the appropriate unit of measurement [~~square footage~~] of the physical device must [~~will~~] be recorded and a diagram describing the installation must [~~will~~] be provided.

(3) the complete details of the warranty provided if any; including:

(A) if the warranty does not include the entire structure treated, the areas included must be listed;

(B) the time period of the warranty;

(C) the renewal options and cost;

(D) the obligations of the pest control operator to retreat for termite infestations or repair damage caused by termite infestations within the warranty period; and

(E) conditions that could develop as a result of the owners action or inaction that would void the warranty; and[~~.~~]

(F) name of the pest control company responsible for the warranty.

(4) the signature of approval on the diagram by a certified applicator or licensed technician in the termite category employed by the company making the proposal.

(5) the concentration of any liquid termiticide application to be used on the treatment or minimum number of baiting systems to be installed.

(6) for subterranean termite post construction treatments the following statements and definitions in at least 8-point type: A termite treatment may be a partial treatment or spot treatment using chemical or approved physical barriers or a baiting system. These types of treatments are defined as follows:

(A) Partial. This technique allows a wide variety of treatment strategies but is more involved than a spot treatment (see definition below). Ex.: treatment of some or all of the perimeter, bath traps, expansion joints, stress cracks, portions of framing, walls and bait locations.

(B) Pier and Beam. Generally defined as the treatment of the outer perimeter including porches, patios and treatment of the attached garage. In the crawl space, treatment would include any soil to structure contacts as well as removal of any wood debris on the ground.

(C) Slab Construction. Generally defined as treatment of the perimeter and all known slab penetrations as well as any known expansion joints or stress cracks.

(D) Spot Treatments. Any treatment which concerns a limited, defined area less than ten (10) linear or square feet that is intended to protect a specific location or "spot". Often there are adjacent areas susceptible to termite infestation which are not treated.

(E) Baiting Systems. This type of treatment may include interior and/or perimeter placement of monitoring of baiting systems along with routine inspection intervals. The baiting technique may include one or more locations as prescribed by the product label and instructions.

(F) Barriers. If a physical device is used, the square footage of the physical device must [~~will~~] be recorded and a diagram describing the installation will be provided.

(7) For all termite treatments the following statement in at least 8-point type: For all treatments there will be a diagram showing exactly what will be treated. Treatment specifications and warranties for those treatments may vary widely. Review the pesticide label provided to you for minimum treatment specification. If you have any questions, contact the pest control company or the Texas Structural Pest Control Board, P.O. Box 1927, Austin, Texas 78767-1927. Telephone number (512) 305-8270.

(8) For pre-construction treatments, the Board-approved Termite Pretreatment Disclosure Document (SPCB/D-3) [~~(SPCB/D-2)~~] must be provided to, and signed by, the contractor or purchaser of the pretreatment service prior to the beginning of the treatment. A signed copy must be kept in the pest control use records of the licensee. Failure to provide this document prior to treatment will result in an administrative penalty of up to [~~not less than~~] $3000 per violation. The text and format of the termite pre-treatment disclosure document shall be as follows:
Figure: 22 TAC §599.4(b)(8)

(9) For drywood termite and related insect treatments the following statements and definitions in at least eight (8) point type: A drywood termite or related insect treatment may be a full treatment or limited treatment. These types of treatments are defined as follows:

(A) Full Treatment Generally defined as a treatment to control 100% of the insect infestation by tarpaulin fumigation or appropriate sealing method. A full treatment by fumigation is designed to eliminate every insect colony[~~, both accessible and inaccessible~~]. It should include the infested structure and all attached structures.

[~~Tarpaulin fumigation reaches every part of a structure that may not be reached by other approved methods.~~]

(B) Limited Treatment Any treatment less than full treatment. A treatment which has a limited and defined area that is intended to protect a specific location. Often there are adjacent areas susceptible to dry wood termite or related insect infestations which are not treated. Because of the nature of wood destroying insects, these untreated areas may continue to harbor dry wood termites and unrelated insects throughout the structure without detection.

(10) A consumer information sheet as required by §595.7 of this title (relating to Consumer Information Sheet).

(c) Before conducting an initial termite treatment for the customer, the pest control company proposing the treatment must [~~shall~~] present the prospective customer or designees with a diagram or blueprint or building plat and description of the structure(s) to be treated including the following:

(1) construction details needed for clarity of the report;

(2) known wood destroying insect activity;

(3) areas of conditions conducive to infestation by wood destroying insects; and

(4) other information about construction relevant to the treatment proposal.

(d) For any retreatment of a property for an existing customer, the pest control company must [~~shall~~] provide the following before conducting the retreatment:

(1) the label; if different than that used in the preceding treatment(s);

(2) a diagram or updated diagram of the structure showing areas to be treated;

(3) any changes to the warranty information;

(4) a consumer information sheet as required by §595.7 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 24, 2005.

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Dale Burnett
Executive Director
Texas Structural Pest Control Board
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For further information, please call: (512) 305-8270

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22 TAC §599.5

The Texas Structural Pest Control Board proposes an amendment to §599.5, concerning Inspection Procedures. The proposal clarifies correcting the grammar on "Wood Destroying Insect." Wording was added for consistency with Real Estate Transaction Inspection. Termites was replaced with wood destroying insects to reflect the greater range of insects who eat cellulose.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect. There will be no cost of compliance for small businesses since the rule proposal does not affect them. There is no cost comparison for small or large businesses since they will not be affected by the rule proposal. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Dale Burnett, Executive Director, has determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule will be that the grammar is corrected and consistency with other rules is also obtained.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§599.5. Inspection Procedures.

(a) Inspections for the purpose of issuing a wood destroying insect report must [~~shall~~] be conducted in a manner consistent with the procedures described in this section. Inspections for the purpose of issuing a wood destroying insect report [~~Wood Destroying Insect Report~~] must be conducted by a licensed certified applicator or technician in the termite category and must [~~shall~~] be approved by a certified applicator upon completion. The purpose of the inspection is to provide a report regarding the absence or presence of wood destroying insects [~~Wood Destroying Insects~~]. The inspection should provide the basis for recommendations of preventive or remedial actions, if necessary, to minimize economic losses. For purposes of a Real Estate Transaction Inspection Report (§599.6) only, there must be visible evidence of active infestation in the structure or visible evidence of a previous infestation in the structure with no evidence of prior treatment to recommend a corrective treatment. The inspection must be conducted so as to ensure examination of all visible accessible areas in or on a structure in accordance with accepted procedures. While such an examination may reveal wood destroying insects [~~Wood Destroying Insects~~], there are instances when concealed infestations and/or damage may not be discovered. Examinations of inaccessible or obstructed areas are not required.

(b) Inaccessible or obstructed areas recognized by the Board include, but are not limited to:

(1) inaccessible attics or portion thereof;

(2) the interior of hollow walls, spaces between a floor or porch deck and the ceiling or soffit below;

(3) such structural segments as porte cocheres, enclosed bay windows, buttresses, and similar areas to which there is no access without defacing or tearing out lumber, masonry, or finished work;

(4) areas behind or beneath stoves, refrigerators, furniture, built-in cabinets, insulation, floor coverings; and

(5) areas where the storage conditions or locks make inspection impracticable.

(c) The inspector must [~~shall~~] describe structure(s) inspected and include the following:

(1) the address or location;

(2) a diagram (does not have to be to scale) showing;

(A) approximate perimeter measurements of the structure as accurately as practical;

(B) construction details needed for clarity of the report;

(C) areas of present wood destroying insect [~~Wood Destroying Insect~~] activity;

(D) areas of previous wood destroying insect [~~Wood Destroying Insect~~] activity; and

(E) areas of conditions conducive to infestation by wood destroying insects [~~Wood Destroying Insects~~];

(3) inaccessible or obstructed areas, including, but not limited to the areas listed in subsection (b) of this section.

(d) The inspection must [~~shall~~] include, but is not limited to, the following areas if accessible and unobstructed:

(1) plumbing;

(A) bathroom;

(B) kitchen;

(C) laundry; or

(D) other (specify, i.e., hot tub, etc.);

(2) window and door frames and sills;

(3) baseboards, flooring, walls, and ceilings;

(4) entrance steps and porches;

(5) exterior of slab or foundation wall;

(6) crawl space:

(A) support piers (include stiff legs);

(B) floor joist;

(C) sub floors;

(D) sill plates; and

(E) foundation wall;

(7) fireplace; and

(8) weep holes.

(e) Visible evidence of the following conditions must be reported:

(1) wood destroying insects [~~termite life forms~~] or signs of current active infestation;

(2) termite tubes or frass;

(3) exit holes or frass from other wood destroying insects [~~Wood Destroying Insects~~];

(4) evidence of previous treatment or infestation;

(5) conditions conducive to wood destroying insect [~~termite~~] infestation [~~such as~~]:

(A) a structure with wood to ground contact;

(B) formboards left in place;

(C) excessive moisture;

(D) wood debris under or around structure;

(E) footing too low or soil line too high;

(F) insufficient clearance in crawl space;

(G) expansion joints or cracks in slab; or

(H) decks;

(6) infestation of other wood destroying insects.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dale Burnett
Executive Director
Texas Structural Pest Control Board
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For further information, please call: (512) 305-8270

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22 TAC §599.6

The Texas Structural Pest Control Board proposes an amendment to §599.6, concerning Real Estate Transaction Inspection Reports. The proposal will correct grammar in the regulation. The proposal will also provide clarity by listing the business license holder issuing the report instead of the words "inspecting company." A two year requirement for keeping records is also added.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect. There will be no cost of compliance for small businesses since the rule proposal does not affect them. There is no cost comparison for small or large businesses since they will not be affected by the rule proposal. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Dale Burnett, Executive Director, has determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule will be that the grammar is corrected. Clarity will be provided as to the party issuing the report. The two year requirement for keeping records will help with enforcement by giving a more complete picture of the inspection.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§599.6. Real Estate Transaction Inspection Reports.

(a) All inspection reports issued regarding the visible presence or absence of termites and other wood destroying insects in connection with a real estate transaction must [~~shall~~] be made on a form prescribed and officially adopted by the Board [~~board~~].

(b) The report form will include a space to report conditions consistent with §599.5 of this title (relating to Inspection Procedures).

(c) The Texas Official Wood Destroying Insect Report Form SPCB/T-4 [~~SPCB\T-4~~] is adopted by reference. The form may be examined in the office of the Texas Register and the Texas Structural Pest Control Board. Forms for reproduction may be obtained from the Texas Structural Pest Control Board office, P.O. Box 1927, Austin, Texas 78767-1927.

(d) For each inspection, copies of the completed form must [~~shall~~] be prepared for the:

(1) person who ordered the inspection; and

(2) business files of business license holder issuing the report [~~inspecting company~~].

(e) The licensee issuing the report must retain records of inspection reports for a minimum of two (2) years.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 24, 2005.

TRD-200502624
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 305-8270

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22 TAC §599.7

The Texas Structural Pest Control Board proposes an amendment to §599.7 concerning Posting Notice of Inspection or Treatment. The proposal will change the title of the section to avoid confusion. The use of sticker will reflect current industry practice.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect. There will be no cost of compliance for small businesses since the rule proposal does not affect them. There is no cost comparison for small or large businesses since they will not be affected by the rule proposal. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Dale Burnett, Executive Director, has determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as will be that confusion will be avoided with the title change. The title will now reflect the current industry practice. The use of the word "sticker" will also reflect the current industry practices.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§599.7. Posting Notice of Inspection [~~or Treatment~~].

(a) Upon completion of an inspection for the purposes of completing the SPCB/T-4 Form, the inspector must [~~shall~~] post a durable sticker [~~sign~~] on the wall adjacent to the water heater, interior of bath trap access, electric breaker box or beneath the kitchen sink giving the name and address of the licensee, the date of the inspection or treatment, a statement that the sticker [~~notice~~] should not be removed and of the product used.

(b) It will be a violation of this section for any licensee of the Board to remove or deface a posted inspection sticker [~~notice~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 24, 2005.

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Dale Burnett
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For further information, please call: (512) 305-8270

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22 TAC §599.11

The Texas Structural Pest Control Board proposes an amendment to §599.11, concerning Structural Fumigation Requirements. The proposal will change organisms to insects to reflect consistency with the law and "structural" added to fumigation for clarity. The reference to county and city laws is deleted because federal and state laws supersede local requirements. The notification requirement in the label is updated to reflect the federal requirements of notification if notification is required.

The word "sign" is replaced with "sticker" to reflect the current industry practice. Under §599.11(i), clarity is provided by using the words "to guard." Also the training requirements are changed from sixteen hours to four hours. This change is made since further study has shown that four hours covers sufficient material to keep a licensee up to date.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the amended section. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the amended section will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the amended section will be in effect.

There is no cost of compliance for individuals since the proposal does not affect them.

There will be no cost of compliance for small businesses since the proposal does not affect them.

There is no cost comparison for small or large businesses since they will not be affected by the proposal.

Mr. Burnett has also determined that for each year of the first five years the amendment as proposed is in effect, the public benefits anticipated as a result of enforcing the amended section will be that the regulation will be updated to reflect federal and state law requirements. Other changes were made to clarify the responsibility of the licensee responsible for the structural fumigation. The use of the word "guard" makes clear the duties of the person monitoring the fumigation. The study requirement change reflects the actual amount of material that is not duplicative that can be studied on a yearly basis.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, Texas 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§599.11. Structural Fumigation Requirements.

(a) Fumigation of structures to control wood destroying insects must [~~organisms~~ ~~shall~~] be performed only under the direct on-site supervision of a certified applicator licensed by the Board in the category of structural fumigation. Direct on-site supervision means [~~shall mean~~] that the certified applicator exercising such supervision must [~~shall~~] be present at the site of the fumigation during the entire time the fumigants are being released and at the time property is released for occupancy.

(b) Fumigation must [~~shall~~] be performed in compliance with all label requirements applicable to state and federal laws and regulations[~~, county, and city laws and ordinances and all applicable laws and regulations of the United States~~].

(c) Prior to the commencement of fumigation, warning signs must [~~shall~~] be posted in plainly visible locations on or in the immediate vicinity of all entrances to the space under fumigation and must [~~shall~~] not be moved until fumigation and ventilation have been completed, and the premises determined safe for reocccupancy. Ventilation must [~~shall~~] be conducted with due regard for the public safety.

(d) When directed by the label, local [~~Local~~] fire authorities or, when not available, local police authorities, must [~~shall~~] be notified in writing or by e-mail prior to introduction of the fumigant and at the time the structure is released for occupancy.

(e) The space to be fumigated must [~~shall~~] be vacated by all occupants prior to the commencement of fumigation. The space to be fumigated must [~~shall~~] be sealed in such manner to assure concentration of the fumigant released has been retained in compliance with the manufacturer's recommendations.

(f) Warning signs must [~~shall~~] be printed in red on white backgrounds and must [~~shall~~] contain the following statement in letters not less than two inches in height; "Danger-Fumigation." They must [~~shall~~] also depict a skull and crossbones, not less than one inch in height, the name of the fumigant, the date and time fumigant was introduced, and the name, address, and telephone number where the certified applicator performing the fumigation may be reached twenty four (24) hours a day.

(g) On any structure that has been fumigated, the certified applicator responsible for [~~who performed~~] the fumigation must [~~shall~~], immediately upon completion, post a durable sticker [~~sign~~] on the wall adjacent to the electric breaker box, water heater, beneath the kitchen sink or in the interior bath trap access. This must [~~shall~~] be a durable sticker [~~sign~~] not less than one inch by two inches in size. It must [~~shall~~] have the name of the certified applicator, date of fumigation, fumigant used, and the purpose for which it was fumigated (target pest).

(h) A certified applicator performing fumigation must [~~shall~~] use adequate warning agents with all fumigants which lack such properties. When conditions involving abnormal hazards exist, the person exercising direct on-site supervision must [~~shall~~] take such safety precautions in addition to those prescribed to protect the public health and safety. The certified applicator responsible for the fumigation must [~~shall~~] visibly inspect the structures to assure vacancy prior to introduction of fumigant.

(i) The certified applicator responsible for the fumigation must [~~shall~~] also post a person or persons to guard [~~at~~] the location from the time the fumigant is introduced until all tarpaulins and seals are removed and the label concentration for aeration is reached. The certified applicator responsible for the fumigation must [~~shall~~] then secure all entrances to the structure in such a manner as to prevent entry by anyone other than the certified applicator or licensed individual responsible for the fumigation [~~an agent of the certified applicator~~]. The structure must [~~shall~~] remain secured until the concentration indicated by the fumigant label for release for occupancy is reached.

(j) For the purpose of maintaining proper safety and establishing responsibility in handling the fumigants, the business license holder must [~~shall~~] compile and retain for a period of at least two (2) years a report for each fumigation job and/or treatment. The person posted at the location must [~~shall~~] deter entry into the structure by routinely inspecting the structure under fumigation at least once each hour. The person posted at the location must [~~shall~~] be alert and on duty to prevent entry into the structure while the structure while the fumigant is present. The report for each fumigation job or treatment shall contain the following information:

(1) - (15) (No change.)

(k) - (l) (No change.)

(m) The certified applicator responsible for the fumigation must [~~site shall~~] be responsible for following [~~all the~~] label requirements [~~prescribed procedures~~] for aeration and clearing of the structure that is being fumigated.

(n) (No change.)

(o) Notice of all structural fumigations with contracts requiring treatment of a structure must be called, emailed, or faxed to the Texas Structural Pest Control Board between the hours of 6:00 a.m. and 9:00 p.m. using the specified telephone number, email address or fax number at least four (4), and no more than twenty four (24) hours prior to the structural fumigation application. The licensee must provide address and site location, chemical to be used, date and time of treatment, approximate square footage under contract and the name and physical address of the business licensee. If the structural fumigation is cancelled, notice of the cancellation must be sent using the Board specified telephone number, email address or fax number within one to six hours of the time the licensee learns of the cancellation. Any violation of 22 TAC §599.11(o) will result in a fine of up to $3000 based on a penalty matrix and is considered a base penalty 3.

(p) Before an individual may apply for an initial certified applicator's license in the structural fumigation category (with the exception listed in §599.11(r)), the following experience requirements must be met.

(1) Attend a forty (40) hour structural fumigation school that has at least sixteen (16) hours of hands on training, and has been approved by the Executive Director; or [~~Or~~]

(2) - (3) (No change.)

(q) Current certified applicators must conduct/perform at least three structural fumigation jobs per year or four (4) [~~sixteen (16)~~] hours of training per year to maintain their certification.

(1) - (2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 24, 2005.

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Dale Burnett
Executive Director
Texas Structural Pest Control Board
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 305-8270

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 146. TRAINING AND REGULATION OF PROMOTORES(AS) OR COMMUNITY HEALTH WORKERS

25 TAC §§146.1 - 146.10

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §§146.1-146.10, concerning the regulation of training and certification of promotores(as) or community health workers.

BACKGROUND AND PURPOSE

The Promotor(a) or Community Health Worker Training and Certification Advisory Committee (committee) has provided advice to the Health and Human Services Commission and the department related to the review of applications and the recommendation of qualifying applicants as sponsoring institutions, training instructors or as promotores(as) or community health workers. The committee also recommends new or amended rules for the approval of the Health and Human Services Commission. This committee is a successor to, and continues many functions of the Promotora Program Development Committee mentioned in Health and Safety Code, §§48.002(a) and 48.003(a). The committee is established under the Health and Safety Code, §11.016, which allows the Health and Human Services Commission to establish advisory committees. The committee is governed by the Government Code, Chapter 2110, concerning state agency advisory committees.

Health and Safety Code, Chapter 48, requires the department to establish a program designed to train and educate persons who act as promotoras or community health workers. This chapter also requires minimum standards for the certification of promotoras or community health workers. These rules are reasonable and necessary to accomplish this legislative mandate.

SECTION-BY-SECTION SUMMARY

The proposed amendments cover definitions; the purpose of the advisory committee; applicability; application requirements and procedures for promotores or community health workers, instructors, and sponsoring institutions/training programs; types of certificates and applicant eligibility; standards for the approval of curricula; and continuing education requirements. Amendments also reflect the new agency name as Department of State Health Services. The amended language clarifies the rules and improves the ability of promotores(as) or community health workers to obtain the training and certification established by Health and Safety Code, Chapter 48. Also, it improves the ability of the certification program to expedite the process of reviewing applications for certification of instructors and training programs.

FISCAL NOTE

Cecilia Berrios, Regional and Local Services, Department of State Health Services, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications for state and local government as a result of amending the sections as proposed. There may be impacts on such entities to the extent they choose to become involved as employers, sponsors, or education providers to promotores(as) or community health workers, but such involvement is voluntary on their part.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

There is no anticipated cost to small businesses or micro-businesses nor to persons who are required to comply with the sections as proposed because becoming a promotor(a) or community health worker or sponsor, or educator is voluntary. Those who choose to become certified under these rules (or their sponsors) will incur the cost of obtaining required education. This cost will vary depending on where this education is obtained. There is no anticipated impact on local employment.

PUBLIC BENEFIT

Ms. Berrios has determined that the public health benefits of the proposed rules amendments include increased clarity of the rules, better conformance to statute, and improved ability of promotores(as) or community health workers to obtain the training and certification established by Health and Safety Code, Chapter 48.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

Under Government Code, §2007.003(b), the department has determined that Chapter 2007 of the Government Code does not apply to these rules. The changes these rules make do not implicate a recognized interest in private rule property. Accordingly, the department is not required to complete a takings assessment regarding these rules.

PUBLIC COMMENT

Comments may be submitted to Cecilia Berrios, Regional and Local Services, Department of State Health Services, 1100 West 49th Street, Room T-608, Austin, Texas 78756, telephone (512) 458-7770, or cecilia.berrios@dshs.state.tx.us. Comments on the proposed sections will be accepted for 30 days following publication in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are proposed under Health and Safety Code, §48.003, which requires the Texas Board of Health (board) to adopt rules that provide minimum standards and guidelines on training; §48.002, which allows the board to provide for exemption from certification by rule; §11.016, which allows the board to appoint advisory committees to assist the board in performing its duties; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the Texas Department of Health and the commissioner of health. The Texas Department of Health and the Texas Board of Health were abolished by Chapter 198, §§1.18 and 1.26, 78th Legislature, Regular Session, 2003. Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The amendments affect Health and Safety Code, Chapters 11 and 48.

§146.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Applicant--A promotor(a) or community health worker who applies to the Department of State Health Services [~~Texas Department of Health~~] for a certificate of competence, a sponsoring institution or training program who applies to the department to offer training or an instructor who applies to the department to train promotores(as) or community health workers.

(3) HHSC--The Texas Health and Human Services Commission [~~Board--The Texas Board of Health~~].

(4) Certificate of Competence--Promotor(a) or community health worker certificates issued by the Department of State Health Services [~~Texas Department of Health~~].

(5) (No change.)

(6) Department--The Department of State Health Services [~~Texas Department of Health~~].

(7) - (12) (No change.)

§146.2. Promotor(a) or Community Health Worker Training and Certification Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) (No change.)

(2) The committee is established under the Health and Safety Code, §11.016, which allows the Executive Commissioner of HHSC [~~Board of Health (board)~~] to establish advisory committees.

(b) (No change.)

(c) Purpose. The purpose of the committee is to [~~review applications and to recommend to the department qualifying applicants as sponsoring institutions and training instructors until May 31, 2004. The committee shall also~~] recommend new or amended rules for the approval of the Executive Commissioner of HHSC [~~board~~]. The committee may also review applications and recommend to the department qualifying applicants as sponsoring institutions or training programs and instructors.

(d) Tasks.

(1) The committee shall advise the Executive Commissioner of HHSC [~~board~~] concerning rules to implement standards adopted under the Health and Safety Code, Chapter 48, [~~46~~] relating to the training and regulation of persons working as promotores(as) or community health workers.

(2) The committee may [~~shall~~] recommend to the department qualifying sponsoring institutions or training programs and instructors [~~until May 31, 2004~~].

(3) The committee shall carry out any other tasks given to the committee by the Executive Commissioner of HHSC [~~board~~].

(e) Review and duration. By November 1, 2007, the Executive Commissioner of HHSC [~~board~~] will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of nine members appointed by the Executive Commissioner of HHSC [~~board~~]. The composition of the committee shall include:

(1) - (4) (No change.)

(g)- (h) (No change.)

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of the Department of State Health Services [~~Texas Department of Health~~] (department) staff and either the presiding officer or at least three members of the committee.

(2) - (7) (No change.)

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) - (3) (No change.)

(4) The attendance records of the members shall be reported to the Executive Commissioner of HHSC [~~board~~]. The report shall include attendance at committee and subcommittee meetings.

(k) (No change.)

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) - (4) (No change.)

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the Executive Commissioner of HHSC [~~board~~] and each member of the committee within 30 days of each meeting.

(B) (No change.)

(m) (No change.)

(n) Statement by members.

(1) The Executive Commissioner of HHSC [~~board~~], the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the Executive Commissioner of HHSC [~~board~~], department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the Executive Commissioner of HHSC [~~board~~], the department, or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) - (6) (No change.)

(o) Reports to the Executive Commissioner of HHSC [~~board~~]. The committee shall file an annual written report with the Executive Commissioner of HHSC [~~board~~].

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the Executive Commissioner of HHSC [~~board~~], the status of any rules which were recommended by the committee to the Executive Commissioner of HHSC [~~board~~], anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) (No change.)

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the Executive Commissioner of HHSC [~~board~~] each January. It shall be signed by the presiding officer and appropriate department staff.

(p) (No change.)

§146.3. Applicability.

(a) (No change.)

(b) The provisions of this chapter apply to any promotor(a) or community health worker, and instructor, representing that he or she performs or will perform as a certified promotor(a) or community health worker or, trains or will train promotores(as) or community health workers respectively. It also applies to any institution or training program that will sponsor/provide or sponsors/[~~or~~] provides training programs for promotores(as) or community health workers, who will expect certification under this chapter.

(c) (No change.)

§146.4. Application Requirements and Procedures for Promotores(as) or Community Health Workers.

(a) - (b) (No change.)

(c) Required application materials. The application form shall contain the following items:

(1) specific personal data, [~~social security number or status (optional),~~] birth date, current and previous promotor(a) or community health worker activity (if applicable), and any educational and training background;

(2) - (9) (No change.)

(d) Application approval.

[~~(1) The committee shall be responsible for reviewing all applications and recommending promotores(as) or community health workers to be certified to the administrator.~~]

[~~(2)~~] The administrator shall approve any application which is in compliance with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (e) of this section.

(e) - (f) (No change.)

§146.5. Application Requirements and Procedures for Instructors.

(a) - (b) (No change.)

(c) Required application materials. The application form shall contain the following items:

(1) specific personal data, [~~social security number or status (optional),~~] birth date, current and previous places of employment, other state licenses and certificates held, and educational and training background;

(2) - (9) (No change.)

(d) Application approval.

(1) The committee may [~~shall~~] be responsible for reviewing [~~all~~] applications and recommending those to be certified by the administrator.

(2) (No change.)

(e) - (f) (No change.)

§146.6. Application Requirements and Procedures for Sponsoring Institutions and Training Programs.

(a) - (c) (No change.)

(d) Application approval.

(1) The committee may [~~shall~~] be responsible for reviewing [~~all~~] applications and recommending those to be certified to the administrator.

(2) (No change.)

(e) - (f) (No change.)

§146.7. Types of Certificates and Applicant Eligibility.

(a) Purpose. The purpose of this section is to set out the types of certificates issued and the qualifications of applicants.

(1) The Department of State Health Services [~~Texas Department of Health~~] (department) shall issue promotor(a) or community health worker certificates of competence, instructor certificates, and sponsoring institutions or training program certificates. A certificate will recognize all those who have performed promotor(a) or community health worker services between July 1997 to January 2005 [~~2004~~] and not less than 1000 cumulative hours between July 1997 to January 2005 [~~2004~~]. A certificate will recognize all those who have successfully completed an entry-level training and certification program.

(2) - (7) (No change.)

(b) Special provisions for persons who have performed promotor(a) or community health worker services between July 1997 to

January 2005 [~~2004~~]. Upon submission of the application forms by the practicing promotor(a) or community health worker and upon approval by the department, the department shall issue a certificate of competence to a person who has performed promotor(a) or community health worker services for not less than 1000 cumulative hours between July 1997 to January 2005 [~~2004~~], as documented on form(s) prescribed by the department.

(c) Special provisions for persons who are nationally certified health education specialists in good standing, with experience in instructing or training promotores(as) or community health workers for not less than 1000 cumulative hours between July 1997 to January 2005 [~~2004~~], other licensed/certified healthcare professionals including social workers in good standing as well as other professionals with Masters degrees in public health, community health or related field, or Bachelors degrees in social services or related field who have acted as instructors of promotores(as) or community health workers, for not less than 1000 cumulative hours between July 1997 to January 2005 [~~2004~~] and for promotores(as) or community health workers who have acted as supervisors or as trainers and have experience in instructing or training promotores(as) or community health workers for not less than 1000 cumulative hours between July 1997 to January 2005 [~~2004~~]. Upon submission of the application forms by an instructor, other licensed/certified healthcare professional or certified health education specialist, or instructor with Masters/Bachelors degree and upon approval by the department, the department shall issue an instructor certificate to a person who is certified by the National Commission for Health Education Credentialing, Inc., or who is a licensed/certified healthcare professional, or instructor with a Masters/Bachelors degree and to a promotor(a) or community health worker who meets the above qualifications.

(d) - (f) (No change.)

§146.8. Standards for the Approval of Curricula.

(a) (No change.)

(b) All curricula to be used and programs developed to train individuals to perform promotor(a) or community health worker services or to act as instructors must:

(1) - (5) (No change.)

(6) be submitted to the department along with supporting materials in a three-ring binder with all pages clearly legible and consecutively numbered with a table of contents (follow Required Table of Contents on page ii of application form) and divided with tabs identified to correspond to the core competencies, including evaluation materials and other programmatic information and assurances required within this section;

(7) - (13) (No change.)

§146.9. Certificate Issuance and Renewals.

(a) - (b) (No change.)

(c) Certificate renewal. Each promotor(a) or community health worker, instructor and sponsoring institution or training program shall renew the certificate biennially (every two years).

(1) - (3) (No change.)

(d) - (e) (No change.)

§146.10. Continuing Education Requirements.

(a) (No change.)

(b) General. Continuing education requirements for recertification shall be fulfilled during each biennial renewal period. A promotor(a) or community health worker must complete 20 contact hours of continuing education acceptable to the department during each biennial renewal period. An instructor must complete at a minimum 20 contact hours of continuing education acceptable to the department during each biennial renewal period.

(1) At least 50% of the required number of hours shall be satisfied by attendance and participation in instructor-directed activities through a department certified sponsoring institution/training program.

(2) No more than 50% of the required number of hours may be satisfied through verifiable independent self-study. These activities include reading materials, audio materials, audiovisual materials, training not certified by the department, or a combination thereof which meet the requirements set out in this section.

(3) (No change.)

(c) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2005.

TRD-200502582
Cathy Campbell
Director, Legal Services
Department of State Health Services
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 458-7236

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL
SUBCHAPTER K. GIFTS, GRANTS AND DONATIONS

28 TAC §§34.1101 - 34.1107

The Texas Department of Insurance proposes new Subchapter K, §§34.1101-34.1107, concerning gifts, grants, and donations to the State Fire Marshal's Office. The proposal is necessary to implement legislation enacted by the 78th Regular Session Legislature in House Bill (HB) 2701 which amends Chapter 417, Government Code. HB 2701 requires the development of public educational programs which disseminate pertinent information about fire prevention and safety and allows the commissioner of insurance to accept gifts, grants, and donations for this purpose.

Proposed §34.1101 provides the purpose of the subchapter which is to establish the rules for acceptance of gifts, grants and donations for the State Fire Marshal's Office. Proposed §34.1102 states that the commissioner is authorized by statute to accept gifts, grants and donations for fire prevention and safety educational programs and materials. The definitions for the subchapter are set forth in proposed §34.1103. Proposed §34.1104 states that gifts to the State Fire Marshal must be accepted by the commissioner and that any goods donated to the State Fire Marshal become state property. Proposed §34.1105 prohibits the solicitation of any gift, grant or donation by the commissioner, officer or employee of the department, but makes clear that the fire marshal, with the approval of the

commissioner, may make an application for a grant that would enhance the public welfare. Proposed §34.1106 sets forth the standards of conduct that govern the relationships between the commissioner and the donor and between employees and donors, respectively. The procedures for accepting gifts, grants and donations are described in proposed §34.1107.

Paul Maldonado, State Fire Marshal, has determined that for each year of the first five years the proposed sections are in effect, there will be no fiscal impact to state government. There will be no fiscal implications for local government as a result of enforcing or administering the new standards, and no effect on the local economy or local employment.

Mr. Maldonado also has determined that for each year of the first five years the proposed sections are in effect, the anticipated public benefit from enforcing and administering the sections will be an increase in funds or property to use toward developing educational programs as well as generating and disseminating information to the public regarding fire prevention and safety. The result in the increase in funds will enable the state fire marshal to develop more education programs and information on fire prevention and safety which will be provided to the public and enable the public to become better educated about fire prevention and fire safety. Since provision of gifts and donations is voluntary any costs to individuals to comply with the proposed sections will be a part of the gift or donation and not a requirement of compliance with the proposed rule. There is minimal, to no cost to comply with the proposed rule, since it primarily pertains to procedures the department will follow for the acceptance of gifts, grants, and donations. There are some provisions that the donor must follow, but those would be considered as part of the gift or donation and not a separate cost of compliance. As these are voluntary actions, there is no difference in impact on a person or entity qualifying as a small or micro-business under the Government Code §2006.001 compared to a large business.

To be considered, all comments on the proposal must be submitted in writing no later than 5:00 p.m. on August 8, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Paul Maldonado, State Fire Marshal, Mail Code 112-FM, Texas Department of Insurance, P.O. Box 149221, Austin, Texas 78714-9221. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The new sections are proposed pursuant to the Government Code §417.005, §417.0051 and Insurance Code §36.001. Government Code §417.005 allows the commissioner to adopt rules necessary to guide the fire marshal in the performance of other duties for the commissioner. Government Code §417.0051 allows the commissioner, through the fire marshal, to develop public education programs about fire prevention and safety. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statute is affected by the proposed sections: Government Code §417.0051

§34.1101. Purpose.

The purpose of this subchapter is to establish procedures for the acceptance of gifts, grants, and donations made to the State Fire Marshal's Office and to create standards of conduct to govern the relationships between employees of the department and donors or grantors.

§34.1102. General Authority to Accept Gifts, Grants, and Donations.

The commissioner, through the state fire marshal, is statutorily authorized to accept gifts grants, and donations from any source to develop educational programs and disseminate materials necessary to educate the public effectively regarding methods of fire prevention and safety. It is the policy of the department to accept only those donations and grants that advance the purposes of Government Code §417.0051, Fire Prevention and Safety Education.

§34.1103. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commissioner--The Commissioner of Insurance.

(2) Department--The Texas Department of Insurance.

(3) Donation--Money or other assistance from any source other than a grant.

(4) Donation agreement--A written document executed by the commissioner or his designee and the donor that identifies the name of the donor, a description of the donation, the purpose of the donation, and outlines any special conditions of the donation.

(5) Donor--Individuals or organizations that offer to give or give a donation to the department.

(6) Employee--An individual employed by the department in a full or part time capacity.

(7) Gift--Money or other assistance from any source other than a grant.

(8) Grantor--Public or private entity or agency that awards grants to the department.

(9) Grant--Money or other assistance from a grantor, given for a specific purpose.

§34.1104. Acceptance of Gifts, Grants, and Donations.

(a) All gifts, grants and donations made to the state fire marshal must be accepted by the commissioner on behalf of the state fire marshal. No employee of the department can accept gifts, grants, or donations in their individual capacity.

(b) Donated goods received by the state fire marshal become state property and will be treated as such.

§34.1105. Prohibition against Solicitation.

No gifts, grants, or donations shall be solicited by the commissioner or any officer or employee of the department. This provision shall not be interpreted to prevent submission by the fire marshal of an application for a grant which would enhance the public welfare. Such submission shall be approved by the fire marshal and the commissioner.

§34.1106. Standards of Conduct between Commissioner and Donors or Grantors.

Any person or entity seeking to contract with the department on a competitive basis or otherwise shall disclose all previous donations and grants made to the state fire marshal or other state agency within the preceding two years. The disclosure shall include the nature and value of the donation or the grant and the date the donation or grant was made. If the donation or grant is ongoing, the last date that the

donation or grant was available to the department shall be used to determine the date of the donation or grant.

§34.1107. Procedures for Acceptance of Gifts, Grants, and Donations.

(a) Donation agreement. The donor and the commissioner shall execute a donation agreement that includes the following information:

(1) a description of the donation, including a determination of the value;

(2) a statement by the donor attesting to its ownership rights in the property, including intellectual property ownership rights;

(3) the signature of the donor if the donor is an individual or its official representative if the donor is a business organization;

(4) the signature of the commissioner;

(5) any conditions restricting the use of the donation;

(6) the mailing address of the donor and principal place of business if the donor is a business entity;

(7) a statement identifying any official relationship between the donor and the department; and

(8) a statement advising the donor to seek legal and/or tax advice from its own legal counsel.

(b) Grants. All grant money and other assistance shall be received after a written grant acceptance has been executed by the grantor, the fire marshal, and the commissioner.

(c) Deposited funds. The department shall deposit monetary contributions from gifts, grants or donations given pursuant to Government Code §417.0051, Fire Prevention and Safety Education, in accordance with state law. The money contributed shall be used for purposes consistent with Government Code §417.0051.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 24, 2005.

TRD-200502608
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 463-6327

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER H. TAX RECORD REQUIREMENTS

34 TAC §9.3059

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §9.3059, concerning certification of appraisal rolls. The comptroller is repealing the existing rule to eliminate obsolete provisions regarding data submission and technology and to require the use of the electronic appraisal roll submission record layout and instructions manual that is updated periodically. A new §9.3059 will be proposed which will have new requirements of each county appraisal district to certify the appraisal roll or a summary of the appraisal roll to the comptroller annually.

John Heleman, Chief Revenue Estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Heleman also has determined that there will be no cost or benefit to the public from the repeal of this rule. This repeal does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the repeal may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

This repeal is proposed under and implements Tax Code, §26.01(b).

§9.3059. Certification of Appraisal Roll.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2005.

TRD-200502580
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 475-0387

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34 TAC §9.3059

The Comptroller of Public Accounts proposes a new §9.3059, concerning certification of appraisal rolls. The comptroller is repealing the existing rule to eliminate obsolete provisions regarding data submission and technology and to require the use of the electronic appraisal roll submission record layout and instructions manual as revised periodically. Tax Code, §26.01(b) requires the chief appraiser of each county appraisal district to certify the appraisal roll or a summary of the appraisal roll to the comptroller annually in the form and manner prescribed by comptroller rule. The new section will provide new requirements of each county appraisal district to certify the appraisal roll or a summary of the appraisal roll to the comptroller annually. An electronic submission record layout and instructions manual will also be adopted by reference.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the rule would benefit the public

by standardizing and streamlining the transmittal of property tax information. The proposed amendment will have no significant impact on small businesses.

Comments on the new section may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

This new section is proposed under and implements Tax Code, §26.01(b).

§9.3059. Certification of Appraisal Roll.

(a) The chief appraiser shall certify a copy of the annual appraisal roll for the appraisal district to the Comptroller of Public Accounts. The appraisal roll shall be submitted to the comptroller by the deadlines and in the form and manner provided in the Electronic Appraisal Roll Submission Record Layout and Instructions Manual published by the comptroller, unless the appraisal district is unable to produce the roll in the prescribed electronic format without substantial modification to its computer system or without substantial expense. In that circumstance, the appraisal roll may be submitted to the comptroller by the deadlines provided in the Electronic Appraisal Roll Submission Record Layout and Instructions Manual and in a hard-copy or other electronic form that complies substantially with the provisions of the manual.

(b) If requested in writing to the manager of the comptroller's property tax division by the chief appraiser at least 30 days before the applicable deadline for submission of an appraisal roll, the deadlines may be waived, but only if the appraisal district can show good cause for late submission.

(c) The manager of the comptroller's property tax division shall deliver a written determination of the request for waiver provided in subsection (b) of this section, by facsimile transmission or regular first-class mail, as requested by the chief appraiser. An appraisal district may appeal the denial of a waiver to the comptroller. The comptroller shall decide each appeal by written order and shall deliver a copy of the order to the chief appraiser by facsimile transmission or regular first class mail, as requested by the chief appraiser.

(d) The Comptroller of Public Accounts adopts by reference the Electronic Appraisal Roll Submission Record Layout and Instructions Manual, as revised periodically. Copies of this publication can be obtained from the Comptroller of Public Accounts, Property Tax Division, P.O Box 13528, Austin, Texas 78711-3528. Copies may also be requested by calling the toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2005.

TRD-200502581
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER C. STANDARDS

37 TAC §35.39

The Texas Department of Public Safety proposes an amendment to §35.39, concerning Private Security. Amendment to the section deletes subsections (e) and (f) and reformats current subsection (g) as new (e). The deletion of subsections (e) and (f) are necessary in order to eliminate a portion of the rule which has created confusion for the public and law enforcement.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to safeguard the public by eliminating a portion of the rule which has created confusion for the public and law enforcement as to whether or not a reserve law enforcement officer is acting as law enforcement or private security. There may be some small economic cost to individuals, small businesses, or micro-businesses for the purchase of company uniforms; however, the department is unable to estimate these costs, if any.

Comments on the proposal may be submitted to Cliff Grumbles, Manager, Regulatory Licensing Service, Private Security Bureau, P.O. Box 4143, MSC-0242, Austin, Texas 78765-0242, (512) 424-7711.

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(b) are affected by this proposal.

§35.39. Uniform Requirements.

(a) Each commissioned security officer shall, at a minimum, display on the outermost garment the name of the company under whom the commissioned security officer is employed, the word "Security" and identification which contains the last name of the security officer.

(b) The name of the company and the word "Security" shall be of a size, style, shape, design, and type which is clearly visible by a reasonable person under normal conditions.

(c) Each noncommissioned security officer shall display in the outermost garment in style, shape design and type which is visible by a reasonable person under normal conditions identification which contains:

(1) either the name or board-approved logo of the company under whom the security officer is employed, or the name or the board-approved logo of the business entity with whom the employing company had contracted;

(2) the last name of the security officer; and

(3) the word "Security."

(d) No licensee shall display a badge, shoulder patch, logo or any other identification which contains the words "Law Enforcement" and/or similar word(s) including, but not limited to: agent, enforcement agent, detective, task force, fugitive recovery agent or any other combination of names which gives the impression that the bearer is in any way connected with the federal government, state government or any political subdivision of a state government.

~~[(e) A reserve law enforcement officer who has made application for or who has been issued a registration as a non-commissioned security officer or has been issued a security officer commission by the Texas Private Security Board under a licensed security services contractor or a letter of authority may wear the official uniform of that agency while working private security only when:]~~

~~[(1) the chief administrator of the appointing law enforcement agency has the authority to appoint reserve peace officers and a reserve peace officer license has been issued by the Texas Commission on Law Enforcement Officer Standards and Education;]~~

~~[(2) the reserve law enforcement officer has written permission to wear the official uniform of the appointing law enforcement agency;]~~

~~[(3) the written authorization must be signed and dated by the chief administrator of the appointing law enforcement agency and shall be maintained for inspection by the Texas Private Security Board at the principal place of business or branch office of the licensed security service contractor or letter of authority;]~~

~~[(4) the reserve is wearing the official uniform of the appointing agency that clearly identifies that agency and is not wearing a generic peace officer uniform;]~~

~~[(5) the reserve peace officer meets the definition of the Internal Revenue Service as an employee of the licensed security service contractor or letter of authority;]~~

~~[(6) the licensed security services contractor or letter of authority has not accepted any monies or remuneration to allow the reserve peace officer to work under the license of the security services contractor or letter of authority;]~~

~~[(7) the reserve peace officer has not terminated employment with the appointing agency; and]~~

~~[(8) the reserve peace officer has not been summary suspended or summary denied or revoked by the Texas Private Security Board.]~~

~~[(f) A reserve law enforcement officer, while working as a non-commissioned security officer or commissioned security officer for a licensed security services contractor (guard company), private business letter of authority, or governmental letter of authority, shall at all times carry on their person the noncommissioned security officer registration pocket card or security commissioned pocket card issued by the Texas Private Security Board and their official appointing agency's identification; and shall present the same upon request to any individual or law enforcement officer requesting them to identify themselves.]~~

(e) [~~(g)~~] A regular peace officer who maintains full- time employment, and meets the requirements of §1702.322 of the Act, may wear the uniform of the licensed security services contractor (guard company), private business letter of authority, or governmental letter of authority or the official police officer uniform of their appointing law enforcement agency while working private security in Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 24, 2005.

TRD-200502630
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 424-2135

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

The Texas Health and Human Services Commission proposes changes to Title 40, Part 2, Chapter 101, §§101.3611, 101.4525, and 101.4527 of the rules of the Department of Assistive and Rehabilitative Services, concerning rates for medical services. The changes are being proposed to conform standards governing the rates paid for medical services to the requirements of H. B. No. 1912, 79th Legislature, Regular Session.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for the first five-year period the amended sections are in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provision of law pertaining to provision of health and human services in Texas. There should be no material effect to small or micro businesses. There should be no material economic cost to persons who are required to comply with the sections as proposed. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed rule changes will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Deputy General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756.

SUBCHAPTER F. ADMINISTRATIVE RULES AND PROCEDURES PERTAINING TO BLIND SERVICES

DIVISION 1. GENERAL RULES

40 TAC §101.3611

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.3611. Rates for Medical Services.

(a) Pursuant to Human Resources Code §117.074, this rule adopts standards governing the determination of rates paid for medical services provided by the Division for Blind Services. The rates determined under these standards will be reevaluated annually. [~~§91.029 the following rules and standards shall govern the rates the commission will pay for medical services:~~]

(1) Subject to any limitations and exceptions specified in this section, eye-medical and related services purchased by the division [~~commission~~] for consumers served by its various programs shall be paid for at rates not to exceed rates established by Health Care Finance Administration's (HCFA) relative value units (RVUs) adjusted by the Medicare conversion factor as applied to the Current Procedural Terminology (CPT). Where no HCFA RVU exists, a maximum payment shall be set that represents best value based upon factors that include reasonable and customary industry standards for each specific service. Subject to the same limitations and exceptions, noneye-medical and related services shall be paid at the rates established by the Division for Rehabilitation Services [~~Texas Rehabilitation Commission~~].

(2) Rates for eye-medical and related services shall be established at a level adequate to insure availability of qualified providers in adequate numbers to provide assessment and treatment within a geographic distribution that mirrors consumer distribution.

(3) Rates for eye-medical and related services shall be adopted after comparing proposed rates to other cost-based rates for medical services, including Medicaid and Medicare rates. The division [~~commission~~] shall document the reasons that any adopted rate exceeds the Medicaid or Medicare rate for the same service.

(4) Rates for eye-medical and related services shall be administered uniformly in all division [~~commission~~] programs in accordance with federal regulations governing payment for vocational rehabilitation services, which allows the agency to establish and maintain written policies to govern the rates of payment for all purchased services insofar as the schedule:

(A) is not so low as to effectively deny an individual a necessary service;

(B) permits exceptions so that individual needs can be addressed; and

(C) takes into consideration the consumer's informed choice.

(5) The Division [~~Board~~] shall review its rate schedule for eye-medical and related services annually after a public hearing to consider whether adjustments are necessary. If between annual reviews it becomes necessary to set the amount of payment for a medical service because a payment rate is not established in these rules or is not otherwise available, the Assistant Commissioner, Division for Blind Services or designee [~~Executive Director~~] is authorized to set the amount on an individual basis with the advice of the agency's medical and optometric consultants. The interim amounts shall be presented to the Division [~~Board~~] at the next scheduled annual review of all rates.

(6) Until rates are adopted pursuant to this section, the division [~~commission~~] shall pay for medical services using amounts contained in the agency's Maximum Affordable Payment Schedule (MAPS). The MAPS shall continue to be maintained in its present form for public inspection at the division's [~~commission's~~] main office at 4800 North Lamar, Austin, Texas, 78756, until superseded.)

(b) Rate schedule. Based on the standards set forth in subsection (a) of this section, the Division [~~Commission~~] shall pay for medical services according to the following:

(1) The Division [~~Commission~~] shall pay for eye-medical and related services according to the Health Care Financing Administration's (HCFA) Relative Value Units (RVU) base rate adjusted by the Medicare conversion factor if a rate for the service has been established.

(2) When there are no HCFA RVU rates established for eye-prosthetics and related items, the Division [~~Commission~~] shall pay the rates established by Medicare for durable medical equipment, prosthetics, orthotics, and supplies, if a rate for the service has been established.

(3) When there is no HCFA RVU and no established Medicare rate for eye-prosthetics and related items, the Division [~~Commission~~] shall pay the rates established by Medicaid for durable medical equipment, prosthetics, orthotics, and supplies, if a rate for the service has been established.

(4) When there is no rate established by Medicare and Medicaid for optical low-vision devices, the Division [~~Commission~~] shall purchase these from national suppliers either at the supplier's published price or a lesser negotiated price.

(5) The Division [~~Commission~~] shall pay for noneye-medical and related services that are not unique to persons with visual disabilities according to the Division for Rehabilitation Service's [~~Texas Rehabilitation Commission's~~] medical payment rates.

(6) For services and items for which there is neither a rate nor an industry standard that takes into consideration the unique needs of persons with vision loss, the Division [~~Commission~~] shall pay according to the following:

(A) Low vision evaluation: $243;

(B) Hand-held and other nonspectacle-mounted optical low vision devices: national supplier catalog price with an add-on of a 25% processing fee when purchased through a low vision specialist;

(C) Spectacle-mounted optical low vision devices--single element systems: national supplier catalog price, with an add-on of a 30% prescriptive/processing fee when purchased through a low vision specialist;

(D) Spectacle mounted optical low vision devices--Telescopic and other compound optical low vision device systems, including distance vision telescopes, and near vision telescopes: national supplier catalog price, with an add-on of a 40% prescriptive processing fee when purchased through a low vision specialist;

(E) Poly carbonate safety lens: base prescription, with a $15 add for single vision lens, and a $25 add for bifocal lens;

(F) Beecher telescopic systems: national supplier catalog price, with an add-on of a 40% prescriptive processing fee when purchased through a low vision specialist: Total allowable payment $595, which includes Beecher device up to $350 plus 40% ($490), and special fitting fee of $105;

(G) Helm System for clip-on filters, which includes Noir filters, clip-on frame, and UV tint cut and mount: Up to $114;

(H) Fitting, spectacle prosthesis, when used in conjunction with other low vision components: $105;

(I) Fitting of spectacle-mounted low vision aid, when used in conjunction with other low vision components: $240;

(J) Deluxe frames (heavy duty; to support lens(es) with +4D bifocal add or greater, optical low vision lens(es) at or above plus

or minus 8D, or spectacle-mounted optical devices greater than plus or minus 8D): $100.00;

(K) Psychological service, Comprehensive Vocational Evaluation System (CVES) used as Vocational Evaluation: $500.00.

(L) High index aspheric lenses allowable if RX is equal or greater than +/- 8D. Pay at $45 per lens.

(c) The Division for Blind Services Assistant Commissioner [~~executive director~~] or [~~the executive director's~~] designee may establish procedures for and may negotiate payments for medical services under the following conditions:

(1) when a consumer's eye-medical condition requires medical services or a combination of eye-medical services unique to the consumer and rates adopted under subsection (b) of this section are not applicable or do not sufficiently describe the needed service; and

(2) when the service or combination of services is not expected to reoccur because of its uniqueness and adopting a standard rate serves no useful future purpose.

(3) when a new medical service or procedure has become FDA approved or when a related service or procedure has become available, and for which there are no established rates yet in any other payment systems.

(d) Maximum Affordable Payment Schedule (MAPS). A compilation of rates and detailed descriptions of the services are contained in the Maximum Affordable Payment Schedule (MAPS), which is available for viewing according to agency rules on access to public information. Because the compilation contains copyrighted information, the MAPS may not be duplicated for public use.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2005.

TRD-200502552
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 424-4050

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SUBCHAPTER H. PURCHASE OF GOODS AND SERVICES FOR REHABILITATION SERVICES
DIVISION 4. PURCHASE OF GOODS AND SERVICES

40 TAC §101.4525

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.4525. Alternative Purchasing Methods - Schedule of Rates for Medical Services.

Pursuant to Human Resources Code, §117.074, this rule adopts standards governing the determination of rates paid for medical services provided by the Division for Rehabilitation Services. The rates determined under these standards will be reevaluated annually [~~, §111.0552, the board adopts the following rules and standards governing the determination of rates TRC will pay for medical services~~].

[~~(1) A proposed rate schedule for medical services will be developed and maintained by the TRC Deputy Commissioner for Administrative Services. The proposed rate schedule will be updated and submitted for board approval at least annually. The proposed rate schedule will include a comparison of the proposed rate schedule to other cost-based rates for medical services, including Medicaid and Medicare rates, and for any proposed rate that exceeds the Medicare or Medicaid rate, will document the reasons why the proposed rate ensures the best value in the use of dollars for clients.~~]

[~~(2) The proposed rate schedule will be made available to members of the public upon request. Members of the public may submit written comments concerning the proposed rate schedule at any time to the TRC Deputy Commissioner for Administrative Services, 4900 North Lamar Boulevard, Austin, Texas 78751.~~]

[~~(3) Annually, the board shall adopt by rule a schedule of rates based upon the proposed rate schedule submitted by the TRC Deputy Commissioner for Administrative Services. The board shall hold a public hearing before adopting the rate schedule to allow interested persons to submit comments. In adopting the rate schedule, the board shall compare the proposed rate schedule to other cost-based rates for medical services, including Medicaid and Medicare rates, and for any rate adopted that exceeds the Medicare or Medicaid rate, document the reasons why the rate adopted ensures the best value in the use of dollars for clients.~~]

[~~(4) The following standards will be used when determining the rates TRC will pay for medical services:~~]

(1) [~~(A)~~] Rates will be established based on Medicare and Medicaid schedules for current procedural terminology (CPT). Where Medicare and Medicaid schedules are not applicable, rates that represent best value will be established based upon factors that include reasonable and customary industry standards for each specific service.

(2) [~~(B)~~] Rates will be established at a level adequate to insure availability of qualified providers, and in adequate numbers to provide assessment and treatment, and within a geographic distribution that mirrors client/claimant distribution.

(3) [~~(C)~~] Exceptions to established rates can be made on a case by case basis by the DRS [~~TRC~~] medical director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2005.

TRD-200502553
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 424-4050

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40 TAC §101.4527

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.4527. Schedule of Rates.

Pursuant to Human Resources Code, §117.074 [~~§111.0552(b)~~] and Texas Administrative Code Title 40, §101.4525, the Executive Commissioner of the Health and Human Services Commission adopts by reference the annual schedule of rates the Department of Assistive and Rehabilitative Services, Division for Rehabilitation Services, will pay for medical services beginning May 1, 2005. The schedule of rates may be viewed or copies may be obtained by calling the Department of Assistive and Rehabilitative Services at (512-424-4144) or visiting the Division for Rehabilitation Services at the Brown Heatly Building at 4900 North Lamar; Austin, Texas; 78751.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2005.

TRD-200502554
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: August 7, 2005
For further information, please call: (512) 424-4050

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 813. FOOD STAMP EMPLOYMENT AND TRAINING

SUBCHAPTER D. ALLOWABLE ACTIVITIES

40 TAC §813.33

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new section, submitted by the Texas Workforce Commission has been automatically withdrawn. The new section as proposed appeared in the December 17, 2004 issue of the *Texas Register* (29 TexReg 11583).

Filed with the Office of the Secretary of State on June 27, 2005.

TRD-200502633

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.3

The Texas State Securities Board adopts an amendment to §109.3, concerning financial institutions under the Texas Securities Act (Act) §5.H, without changes to the proposed text as published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1382).

The amendment simplifies the rule to only address the Board's long-standing definition of "savings institution" for purposes of the §5.H exemption. The other components of the previous §109.3 were moved into three new rules concurrently adopted as §§109.4, 109.5, and 109.6, each addressing a different category of registration exemption.

Definitions of terms used in §5.H of the Act may be located more easily.

No comments were received regarding adoption of the amendment.

Statutory authority: Texas Civil Statutes, Articles 581-28-1 and 581-5.T. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T provides that the Board may prescribe new exemptions by rule.

Cross-reference to Statute: Texas Civil Statutes, Article 581-5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2005.

TRD-200502604
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: July 14, 2005
Proposal publication date: March 11, 2005
For further information, please call: (512) 305-8303

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7 TAC §§109.4 - 109.6

The Texas State Securities Board adopts new §109.4, concerning securities registration exemption for sales to financial institutions and certain institutional investors; §109.5, concerning dealer registration exemption for sales to financial institutions and certain institutional investors; and §109.6, concerning investment adviser registration exemption for investment advice to financial institutions and certain institutional investors. Section 109.6 is adopted with changes to the proposed text as published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1383). Sections 109.4 and 109.5 are adopted without changes and will not be republished.

Changes to §109.6 include clarifying when an investment adviser or investment adviser representative is providing investment advisory services to an entity and not to the owners of the legal entity, changing the definition of a "private fund" so that investors who are not natural persons may be permitted to redeem their interests in the fund within two years of purchase, and making non-substantive changes to conform terminology with that used elsewhere in the rule.

Sections 109.4 - 109.6 are based on exemptions formerly contained in §109.3. The exemption from investment adviser registration, set out in §109.6, corresponds closely to federal regulations providing an exemption from federal registration for an investment adviser to a venture capital fund. This exemption also reflects the Board's position that an investment adviser to an entity composed partially or entirely of natural persons is not exempt from registration. Natural persons simply are not institutions, regardless of their net worth or annual income. Likewise, a private investment entity, such as a hedge fund, composed partially or entirely of natural persons, does not equate to an institutional investor. Section 109.6 provides an exemption from registration for an investment adviser to a venture capital fund because a venture capital fund does not constitute a "private fund" as that term is defined in §109.6(c).

These rules clarify the applicability of exemptions for transactions with financial institutions and certain institutional investors to different categories of participants, namely, persons selling securities, dealers, and investment advisers.

No comments were received regarding adoption of §109.4 and §109.5. Vinson & Elkins ("V&E") and Kelly, Hart & Hallman ("KH&H") provided comments on §109.6.

Commenting on behalf of the Texas Venture Capital Association, V&E indicated support for the clarifications provided by the rule and its consistency with the Securities and Exchange Commission (SEC) Rule 203(b)(3)-1(d). This new federal rule permits redemptions of investments within two years of the purchase of the investment under limited circumstances without causing the fund to be deemed a "private fund."

V&E also suggested changes to the definition of a "private fund," to clarify when an investment adviser or investment adviser representative is providing investment advisory services to an entity and not to its individual members, and for consistency in terminology. The staff agreed with many of the suggestions.

Although generally supportive of the proposed rule and the greater level of uniformity it brings to the area, KH&H suggested §109.6 should conform fully to SEC Rule 203(b)(3)-1(d) and permit redemptions of investments within two years of the investment for "extraordinary events" and "reinvestment of distributed capital gains" without causing the fund to be deemed a "private fund." Staff noted that the SEC has provided little guidance about what constitutes an extraordinary event and raised the concern that such ambiguity would encourage abuse of the registration exclusion.

The Board agreed with many of the comments and adopted §109.6 with changes to incorporate many of the points raised. The Board, however, disagreed with the commenters and declined to alter the definition of "private fund" to permit natural persons to redeem within a two-year period following purchase for "extraordinary events." The Board did instruct the staff to gather additional information on this issue with an eye to possibly amending the rule at some future date.

Statutory authority: Texas Civil Statutes, Articles 581-28-1, 581-5.T, and 581-12.C. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 12.C provides the Board with the authority to prescribe new dealer/agent and investment adviser/representative registration exemptions by rule.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-5, 581-7, 581-12, 581-12-1, and 581-18.

§109.6. Investment Adviser Registration Exemption for Investment Advice to Financial Institutions and Certain Institutional Investors.

(a) Availability. The exemption from investment adviser and investment adviser representative registration provided by the Texas Securities Act, §5.H, or this section is not available if the financial institution or other institutional investor named therein is in fact acting only as agent for another purchaser that is not a financial institution or other institutional investor listed in §5.H or this section. These exemptions are available only if the financial institution or other institutional investor named therein is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the investment advisory services for which the investment adviser or investment adviser representative is claiming the exemption. For purposes of this section, an investment adviser or investment adviser representative that is providing investment advisory services to a corporation, general partnership, limited partnership, limited liability company, trust or other legal entity, other than a private fund, is not providing investment advisory services to a shareholder, general partner, member, other security holder, beneficiary or other beneficial owner of the legal entity unless the investment adviser provides investment advisory services to such owner separate and apart from the investment advisory services provided to the legal entity.

(b) Investment advice rendered to certain institutional investors. The State Securities Board, pursuant to the Act, §5.T and §12.C, exempts from the investment adviser and investment adviser representative registration requirements of the Act, persons who render investment advisory services to any of the following:

(1) an "accredited investor" (as that term is defined in Rule 501(a)(1)-(3), (7), and (8) promulgated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933, as amended (1933 Act), as made effective in SEC Release Number 33-6389, as amended in Release Numbers 33-6437, 33-6663, 33-6758, and 33-6825);

(2) any "qualified institutional buyer" (as that term is defined in Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as made effective in SEC Release Number 33-6862, and amended in Release Number 33-6963); and

(3) a corporation, partnership, trust, estate, or other entity (excluding individuals) having net worth of not less than $5 million, or a wholly-owned subsidiary of such entity.

(c) Investment advice rendered to natural persons and private funds. There is no exemption under this section for an investment adviser providing investment advisory services to a natural person or to a private fund, such as a hedge fund, that is composed partially or entirely of natural persons. A "private fund" is an entity that:

(1) would be subject to regulation under the federal Investment Company Act of 1940 but for the exceptions from the definition of "investment company" provided for:

(A) a fund that has no more than 100 beneficial owners, or

(B) a fund that is owned exclusively by qualified purchasers who acquired ownership through a non-public offering;

(2) permits investors who are natural persons to redeem their interests in the fund within two years of purchasing them; and

(3) offers interests in the entity based on the investment advisory skills, ability or expertise of the investment adviser.

(d) Financial statements. For purposes of determining an institutional investor's total assets or net worth under this section, an investment adviser or investment adviser representative may rely upon the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent accountant or which shall have been verified by a principal of the institutional investor.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2005.

TRD-200502605
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: July 14, 2005
Proposal publication date: March 11, 2005
For further information, please call: (512) 305-8303

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CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.3

The Texas State Securities Board adopts an amendment to §115.3, concerning dealer and agent examinations, without changes to the proposed text as published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1385).

An examination waiver is created for an applicant whose prior Texas registration has lapsed for more than two years, but who has been continually registered with the National Association of Securities Dealers and the state securities regulator where the applicant maintains its principal place of business.

Examination waivers in this circumstance will be processed quickly and treated uniformly.

No comments were received regarding adoption of the amendment.

Statutory authority: Texas Civil Statutes, Articles 581-28-1 and 581-13.D. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 13.D provides the Board with authority to waive examination requirements for any applicant or class of applicants.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-13 and 581-19.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200502606
Denise Voigt Crawford
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8303

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CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §116.3

The Texas State Securities Board adopts an amendment to §116.3, concerning investment adviser and investment adviser representative examinations, without changes to the proposed text as published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1386).

An examination waiver is created for an applicant whose prior Texas registration has lapsed for more than two years, but who has been continually registered with the state securities regulator where the applicant maintains its principal place of business. Additionally, cross-references have been updated and an organizational name change noted.

Examination waivers in this circumstance will be processed quickly and treated uniformly.

No comments were received regarding adoption of the amendment.

Statutory authority: Texas Civil Statutes, Articles 581-28-1 and 581-13.D. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 13.D provides the Board with authority to waive examination requirements for any applicant or class of applicants.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-13 and 581-19.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200502607
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: July 14, 2005
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For further information, please call: (512) 305-8303

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7 TAC §116.10

The Texas State Securities Board adopts an amendment to §116.10, concerning supervisory requirements, without changes to the proposed text as published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1387).

The rule clarifies that supervisory systems are required to be in writing.

Registered investment advisers will be informed of requirements for their supervisory systems.

No comments were received regarding adoption of the amendment.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Article 581-1, et seq.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2005.

TRD-200502609

Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: July 14, 2005
Proposal publication date: March 11, 2005
For further information, please call: (512) 305-8303

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CHAPTER 133. FORMS

7 TAC §133.2

The Texas State Securities Board repeals §133.2, a form concerning public information charges--billing detail, without changes to the proposal published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1389).

Repealing this form allows for simultaneous adoption of a new form.

The repeal eliminates an outdated form.

No comments were received regarding adoption of the repeal.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Government Code §552.262.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2005.

TRD-200502610
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: July 14, 2005
Proposal publication date: March 11, 2005
For further information, please call: (512) 305-8303

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7 TAC §133.2

The Texas State Securities Board adopts by reference a new §133.2, a form concerning public information charges--billing detail, without changes to the proposal published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1389).

The new form reflects the current fees for public information established by the Texas Building and Procurement Commission in accordance with the Public Information Act.

The form accurately apprises persons requesting public information of the associated charges.

No comments were received regarding adoption of the new form.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Government Code §552.262.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200502611
Denise Voigt Crawford
Securities Commissioner
State Securities Board
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Proposal publication date: March 11, 2005
For further information, please call: (512) 305-8303

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CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.16

The Texas State Securities Board adopts an amendment to §139.16, concerning sales to individual accredited investors, without changes to the proposed text as published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1389).

The rule explicitly addresses investment intent of purchasers.

The rule clarifies the requirement that an issuer reasonably believe purchases are made with investment intent.

No comments were received regarding adoption of the amendment.

Statutory authority: Texas Civil Statutes, Articles 581-28-1 and 581-5.T. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T provides that the Board may prescribe new exemptions by rule.

Cross-reference to Statute: Texas Civil Statutes, Article 581-5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200502612
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: July 14, 2005
Proposal publication date: March 11, 2005
For further information, please call: (512) 305-8303

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER O. UNBUNDLING AND MARKET POWER

DIVISION 1. UNBUNDLING

16 TAC §25.343

The Public Utility Commission of Texas (commission) adopts an amendment to §25.343, relating to Competitive Energy Services, with changes to the proposed text as published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1390). The amendment will allow an electric utility to provide operation and maintenance services to a military base electric distribution system, whether that system is owned by the military base or is located on the base and is owned by the electric utility or a third party, rather than barring provision of such services as competitive energy services. This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). This amendment is adopted under Project Number 30719.

The commission received comments on the proposed amendment from AEP Texas North Company, AEP Texas Central Company, and Southwest Electric Power Company (collectively, the AEP Companies,) and reply comments from TXU Electric Delivery Company (TXU).

The AEP Companies supported the proposed amendment because the existing rule prevents them from bidding for operation and maintenance service contracts for military bases despite their ability to provide those services. The AEP Companies believe that the amendment will allow them to meet the bases' needs relating to such services, to the benefit of military bases in areas that otherwise have limited options, and they believe the amendment exemplifies the State of Texas's support for military bases. The AEP Companies did not seek any change to the language of the proposed amendment.

Commission response

The commission agrees with the AEP Companies' comments.

Prior to this amendment to §25.343, the commission classified operations and maintenance services for customer-owned electric facilities, including those owned by military bases or owned by third parties but located within military bases, as competitive energy services; §25.343 barred electric utilities from providing those services. Military bases in Texas that are not situated within or very near major metropolitan areas have had difficulty attracting offers for such services on a competitive basis from private providers. Transmission and distribution utilities (TDUs), however, can credibly offer operation and maintenance service for a military base distribution system. The amendment will permit TDUs to operate and maintain military base distribution systems by providing that operations and maintenance services to those bases shall be considered discretionary services rather than competitive energy services.

TXU expressed concern that an ambiguity existed in the rule as proposed because the Utility System Privatization Act, codified at 10 U.S.C. §2688, provides for conveyance or leasing of a military base distribution system, while the purpose of the proposed rule is to provide TDUs the opportunity to bid for operation and maintenance contracts for military base distribution systems. TXU asked, "Is it Staff's intent that this amendment allow electric utilities to provide services to facilities owned by military bases, as contemplated by AEP, or only to facilities located on military bases but owned by a third party as a result of a conveyance" under the Utility System Privatization Act?

Commission response

The commission agrees with TXU's comments that the rule should be clarified.

The rule's language has been clarified to address the ambiguity identified by TXU by removing the reference to the Utility System Privatization Act and to describe more specifically the services that may be offered. The commission's intent in adopting this amendment is to remove the regulatory prohibition against a TDU operating and maintaining a distribution system, whether that distribution system is owned by a military base or is located on a military base and owned by the electric utility or a third party. The commission does not intend to limit the exemption only to those situations in which a military base has already conveyed or leased its distribution system to a third party.

This amendment is adopted under the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and, specifically, §14.001, which authorizes the commission to regulate the business of public utilities within its jurisdiction; §39.001, which authorizes the commission to adopt rules for transition to a fully competitive electric power industry; §39.051, which requires each electric utility to separate its regulated utility activities from its customer energy services activities by unbundling its business activities to create, inter alia, a separate transmission and distribution utility; and §39.203, which requires TDUs to provide transmission and distribution services.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 39.001, 39.051, and 39.203.

§25.343. Competitive Energy Services.

(a) Purpose. The purpose of this section is to identify competitive energy services, as defined in §25.341 of this title (relating to Definitions), that shall not be provided by affected electric utilities.

(b) Application. This section applies to electric utilities, as defined by the Public Utility Regulatory Act (PURA) §31.002(6), which include transmission and distribution utilities as defined by PURA §31.002(19). This section shall not apply to an electric utility under PURA §39.102(c) until the termination of its rate freeze period. This section shall not apply to an electric utility subject to PURA §39.402 until customer choice begins in the utility's service area.

(c) Competitive energy service separation. An electric utility shall not provide competitive energy services, except for the administration of energy efficiency programs as specifically provided elsewhere in this chapter, and except as provided in subsections (f) and (g) of this section.

(d) Petitions relating to the provision of competitive energy services.

(1) Petition by an electric utility to provide a competitive energy service. A utility may petition the commission to provide on an unbundled-tariffed basis a competitive energy service that is not widely available to customers in an area. The utility has the burden to prove to the commission that the service is not widely available in an area. The utility's petition may be filed jointly with an affected person or with commission staff.

(A) Review of petition. In reviewing an electric utility's petition to provide a competitive energy service, the commission may consider, but is not limited to, the following:

(i) geographic and demographic factors;

(ii) number of vendors providing a similar or closely related competitive energy service in the area;

(iii) whether an affiliate of the electric utility offers a similar or closely-related competitive energy service in the area;

(iv) whether the approval of the petition would create or perpetuate a market barrier to entry for new providers of the competitive energy service.

(B) Petition deemed approved. A petition shall be deemed approved without further commission action on the effective date specified in the petition if no objection to the petition is filed with the commission and adequate notice has been completed at least 30 days prior to the effective date. The specified effective date must be at least 60 days after the date the petition is filed with the commission. Notice shall be provided to all entities that have requested notice of petitions by filing such request in a project to be established by the commission, to all retail electric providers in Texas that are certified at the time of the petition, and through a newspaper publication once a week for two consecutive weeks in a newspaper in general circulation throughout the service area for which the petition is requested. Such notice shall state in plain language:

(i) the purpose of the petition;

(ii) the competitive energy service that is the subject of the petition; and

(iii) the date on which the petition will be deemed approved if no objection is filed with the commission.

(C) Approval of petition.

(i) If a petition under this paragraph is granted, the utility shall provide the petitioned service pursuant to a fully unbundled, embedded cost-based tariff.

(ii) The utility's petition to offer the competitive energy service terminates three years from the date the petition is granted by the commission, unless the commission approves a new petition from the utility to continue providing the competitive energy service.

(iii) The costs associated with providing this service shall be tracked separately from other transmission and distribution utility costs.

(2) Petition to classify a service as a competitive energy service or to end the designation of a competitive energy service as a petitioned service. An affected person or the commission staff may petition the commission to classify a service as a competitive energy service or to end the designation of a competitive energy service as a petitioned service. The commission may consider factors including, but not limited to, the factors in paragraph (1) of this subsection (where applicable) when reviewing a petition under this paragraph.

(e) Filing requirements.

(1) An electric utility shall file the following as part of its business separation plan pursuant to §25.342 of this title (relating to Electric Business Separation):

(A) descriptions of each competitive energy service provided by the utility;

(B) detailed plans for completely and fully separating competitive energy services; and

(C) petitions, if any, with associated unbundled tariffs to provide a competitive energy service(s) pursuant to subsection (d)(1) of this section. As part of this filing, affected utilities shall provide all supporting workpapers and documents used in the calculation of the charges for the petitioned services.

(2) An electric utility shall file complete cost information related to paragraph (1) of this subsection pursuant to §25.344 of this title (relating to Cost Separation Proceedings) and the Unbundled Cost of Service Rate Filing Package (UCOS-RFP).

(f) Exceptions related to certain competitive energy services. An electric utility may not own, operate, maintain or provide other services related to equipment of the type described in §25.341(3)(F) of this title, except in any of the following instances or as otherwise provided in this subchapter or by commission order.

(1) An electric utility may provide equipment, maintenance, and repair services in an emergency situation as set forth in subsection (g) of this section.

(2) An electric utility may provide maintenance service to high-voltage protection equipment and other equipment located on the customer's side of delivery point that is an integral part of the utility's delivery system. For purposes of this subsection, the point of delivery means the point at which electric power and energy leave a utility's delivery system.

(3) An electric utility may own equipment located on the customer's side of the point of delivery that is necessary to support the operation of electric-utility-owned facilities, including, but not limited to, billing metering equipment, batteries and chargers, system protection apparatus and relays, and system control and data acquisition equipment.

(4) Until the earlier of January 1, 2008, or the date the commission grants a petition by an affected person to discontinue facilities-rental service provided by an electric utility under this subsection, an electric utility may, pursuant to a commission-approved tariff, continue to own and lease to a customer distribution-voltage facilities on the customer's side of the point of delivery, if the customer was receiving facilities-rental service under a commission-approved tariff prior to September 1, 2000, and the customer elects to continue to lease the facilities. Facilities-rental service shall be provided in accordance with the following requirements.

(A) If the customer elects to continue to lease the facilities from the electric utility, the customer will retain the options of purchasing the rented facilities, renting additional facilities at that same point of delivery, or terminating the facilities-rental arrangement.

(B) Once all of the facilities formerly leased by the electric utility to the customer have been removed from the customer's side of the point of delivery or have been acquired by the customer, the electric utility may no longer offer facilities-rental service at that point of delivery.

(C) The electric utility may continue to operate and maintain the leased facilities pursuant to a commission-approved tariff.

(D) No later than March 1, 2007, an electric utility that provides facilities-rental service shall file with the commission a report on the status of affected facilities and market conditions for this service. At that time, the electric utility shall also file either a plan to discontinue providing facilities-rental service or a petition pursuant to subsection (d)(1) of this section to continue such service.

(E) An affected person or the commission staff may file a petition under subsection (d)(2) of this section to have facilities-rental service classified as a competitive energy service. If the commission grants such a petition, the affected electric utility shall discontinue facilities-rental service pursuant to a schedule determined by the commission.

(5) An electric utility may operate and maintain a distribution system located behind the electric utility's point of delivery on a military base, whether that distribution system is owned by the military base or a third party. In addition, an electric utility may own such a distribution system. For purposes of this subsection, "point of delivery" means the point at which electric power and energy are metered. The provision of such services by an electric utility shall be considered discretionary services and shall not be considered competitive energy services.

(g) Emergency provision of certain competitive energy services.

(1) Emergency situation. Notwithstanding subsection (c) of this section, in an emergency situation, an electric utility may provide transformation and protection equipment and transmission and substation repair services on customer facilities. For purposes of this subsection, an "emergency situation" means a situation in which there is a significant risk of harm to the health or safety of a person or damage to the environment. In determining whether to provide the competitive energy service in an emergency situation, the utility shall consider the following criteria:

(A) whether the customer's facilities are impaired or are in jeopardy of failing, and the nature of the health, safety, or environmental hazard that might result from the impairment or failure of the facilities; and

(B) whether the customer has been unable to procure, or is unable to procure within a reasonable time, the necessary transformation and protection equipment or the necessary transmission or substation repair services from a source other than the electric utility.

(C) whether provision of the emergency service to the customer would interfere with the electric utility's ability to meet its system needs.

(2) Notification and due diligence. Prior to providing an emergency service as set forth in paragraph (1) of this subsection, the electric utility shall inform the customer that the requested service is a competitive energy service and that the utility is not permitted to provide the service unless it is an emergency situation. The utility must determine, based on information provided from the customer or by other methods, whether the situation is an emergency situation, as defined in paragraph (1) of this section.

(3) Record keeping and reporting.

(A) Not later than three business days after the determination of an emergency situation, the electric utility shall attempt to obtain from the customer a written statement explaining the emergency situation and indicating that the customer is aware that the service provided by the utility is a competitive energy service.

(B) The electric utility shall maintain for a period of three years a record of correspondence between the customer and the utility pertaining to the emergency provision of a competitive energy service in accordance with this subsection, including the statement required by subparagraph (A) of this paragraph.

(C) The electric utility shall include in a clearly identified manner the following information for the prior calendar year (January 1 through December 31) in its service quality report filed under §25.81 of this title (relating to Service Quality Reports):

(i) the number of instances in which the utility provided a competitive energy service pursuant to this subsection in the prior calendar year; and

(ii) a brief description of each event, excluding any customer-specific information, and the utility's action to respond to the emergency situation.

(4) Discretionary service charge for provision of competitive energy services in emergency situation. The charge for providing service pursuant to this subsection shall be based on a fully unbundled, embedded cost-based discretionary service tariff. An electric utility that seeks to provide emergency service under this subsection shall file with the commission an updated discretionary service rate schedule to implement this subsection. Notwithstanding other provisions in this chapter, an electric utility may directly bill the requesting entity for emergency service provided under this subsection.

(5) Commission review. Upon request, an electric utility shall make available to the commission all required records regarding the provision of competitive energy services pursuant to this subsection.

(h) Evaluation of competitive energy services. Every two years beginning in October 2005 or as otherwise determined by the commission, the commission shall evaluate the degree of competition for the competitive energy services described in §25.341 of this title to determine if they are widely available in areas throughout Texas.

(i) Sale of non-roadway security lighting assets. Prior to the execution of a sale of an electric utility's non-roadway security lighting assets described in §25.341(3)(J)(i) and (ii) of this title, the electric utility shall provide the commission reasonable notice of the proposed transaction.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 21, 2005.

TRD-200502556
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: July 11, 2005
Proposal publication date: March 11, 2005
For further information, please call: (512) 936-7223

PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS
SUBCHAPTER A. ORGANIZATION OF THE COMMISSION

16 TAC §303.17

The Texas Racing Commission adopts new §303.17, relating to vendor protests. The new section is adopted without changes to the proposed text published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1391) and the section will not be republished.

The section is adopted to ensure the Commission's purchasing processes will conform fully to applicable state law. The new section establishes protest procedures for resolving vendor protests relating to purchasing issues pursuant to Government Code, §2155.076.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; and under Government Code, §2155.076.

The new section implements Government Code, §2155.076.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 23, 2005.

TRD-200502589
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Effective date: July 15, 2005
Proposal publication date: March 11, 2005
For further information, please call: (512) 833-6699

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SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS
DIVISION 1. GENERAL PROVISIONS

16 TAC §303.83

The Texas Racing Commission adopts an amendment to §303.83, relating to audits, financial statements and performance measures. The amendment is adopted without changes to the proposed text published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1392) and the text will not be republished.

The amendment is adopted to ensure that the horse and greyhound breed registries will have more flexibility when acquiring audited financial statements for submission to the Commission.

The amendment clarifies that an official breed registry need submit audited financial statements only with respect to the registry's operation of the Texas Bred Incentive Program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; and §6.08(g), which authorizes the Commission to adopt rules relating to the accounting, audit, and distribution of money set aside for the Texas Bred Incentive Programs.

The amendment implements Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 23, 2005.

TRD-200502590
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Effective date: July 15, 2005
Proposal publication date: March 11, 2005
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CHAPTER 309. RACETRACK LICENSES AND OPERATIONS
SUBCHAPTER B. OPERATIONS OF RACETRACKS
DIVISION 2. FACILITIES AND EQUIPMENT

16 TAC §309.124

The Texas Racing Commission adopts an amendment to §309.124, relating to the requirement that racetrack associations provide and maintain a public address system. The amendment is adopted without changes to the proposed text published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1392) and the text will not be republished.

The amendment is adopted to ensure that the health of greyhounds at Texas greyhound racetracks will be enhanced since they will not be disrupted by the public address system.

The amendment eliminates the requirement that there be a public address system in the kennel area of a greyhound racetrack.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks.

The amendment implements Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 23, 2005.

TRD-200502591
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Effective date: July 15, 2005
Proposal publication date: March 11, 2005
For further information, please call: (512) 833-6699

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CHAPTER 315. OFFICIALS AND RULES FOR GREYHOUND RACING

SUBCHAPTER B. ENTRIES AND PRE-RACE PROCEDURES

16 TAC §315.106

The Texas Racing Commission adopts an amendment to §315.106, relating to liability for fees in stake races. The amendment is adopted without changes to the proposed text published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1393) and the text will not be republished.

The amendment is adopted to ensure that the Commission's rules will accurately reflect their regulatory intent.

When Chapter 315 was last reviewed in 2000, an error was made in the text of this section. This amendment returns the section to the originally intended language.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks.

The amendment implements Texas Civil Statutes, Article 179e.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 23, 2005.

TRD-200502592
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Effective date: July 15, 2005
Proposal publication date: March 11, 2005
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER BB. COMMISSIONER'S RULES ON REPORTING REQUIREMENTS

19 TAC §61.1025

The Texas Education Agency (TEA) adopts an amendment to §61.1025, concerning the Public Education Information Management System (PEIMS). The amendment is adopted without changes to the proposed text as published in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2645) and will not be republished. The section defines the standards by which school districts and charter schools are to submit required information. The section also specifies the review process when data elements are added, deleted, or modified, providing consistency in updates to the PEIMS standards. The adopted amendment clarifies the description of the TEA's data collection and reporting systems. This clarification provides the additional flexibility needed to determine the best methods to collect and report data to meet state and federal statutory requirements.

Through 19 TAC §61.1025, adopted to be effective May 30, 2001, the commissioner exercised rulemaking authority over PEIMS as authorized by TEC, §42.006. The adopted amendment to 19 TAC §61.1025, Public Education Information Management System (PEIMS) Data Standards, adds new subsection (a) establishing what data comprise PEIMS; revises subsection (b) by clarifying the broader description of data standards; modifies subsection (c) by updating and refining the description of the external review process; and adds new subsection (d) delineating the agency's internal review process. The adoption clarifying the description of the agency's data collection and reporting systems also includes changing the section title to Public Education Information Management System (PEIMS) Data and Reporting Standards.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code (TEC), §42.006, which authorizes the commissioner of education, in reviewing and revising the Public Education Information Management System (PEIMS), to develop rules to ensure that the PEIMS meets the requirements specified in TEC, §42.006(c)(1) - (3) and (d).

The amendment implements the Texas Education Code, §42.006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2005.

TRD-200502628
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: July 14, 2005
Proposal publication date: May 6, 2005
For further information, please call: (512) 475-1497

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CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1004

The Texas Education Agency (TEA) adopts new §97.1004, concerning adequately yearly progress (AYP). The new section and accompanying figure are adopted without changes to the proposed text as published in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2647) and will not be republished. The new §97.1004 describes the procedures for determining AYP and adopts applicable excerpts, *Sections II - IV* of the *2004 Adequate Yearly Progress Guide*, dated September 2004.

Under the accountability provisions in the federal No Child Left Behind Act, all public school campuses, school districts, and the state are evaluated for AYP. Districts, campuses, and the state are required to meet AYP criteria on three measures: reading/language arts, mathematics, and either graduation rate (for high schools and districts) or attendance rate (for elementary and middle/junior high schools). If a campus, district, or state that is receiving Title I, Part A funds fails to meet AYP for two consecutive years, that campus, district, or state is subject to certain requirements such as offering supplemental educational services, offering school choice, or taking corrective actions. To implement these requirements, the agency developed the AYP Guide. Agency legal counsel has determined that the commissioner of education should take formal rulemaking action to place into the *Texas Administrative Code* procedures related to AYP. The intention is to annually update the rule to incorporate provisions from the most recently published AYP Guide.

The adopted new 19 TAC §97.1004 establishes provisions related to AYP and sets forth the process for evaluating campus and district AYP status. The new rule also adopts excerpts of the *2004 Adequate Yearly Progress Guide* that describe specific features of the system, AYP measures and standards, and appeals. The adoption establishes in rule the specific procedures for AYP. The commissioner will establish AYP provisions annually and communicate that information with school districts and charters. Applicable procedures will be adopted each year as annual versions of the AYP manual are published.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Education Code (TEC), §7.055(b)(32), which authorizes the commissioner to perform duties in connection with the public school accountability system as prescribed by TEC, Chapter 39; TEC, §39.073, which authorizes the commissioner to determine how all indicators adopted under TEC, §39.051(b), may be used to determine accountability ratings; and TEC, §39.075(a)(4), which authorizes the commissioner to conduct special accreditation investigations in response to state and federal program requirements.

The new section implements the Texas Education Code, §§7.055(b)(32), 39.073, and 39.075(a)(4).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2005.

TRD-200502629
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: July 14, 2005
Proposal publication date: May 6, 2005
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 2. TEXAS STATE BOARD OF BARBER EXAMINERS

CHAPTER 51. PRACTICE AND PROCEDURE

SUBCHAPTER A. THE BOARD

22 TAC §51.3

The Texas State Board of Barber Examiners adopts an amendment to §51.3, concerning fines and administrative penalties for practice violations related to Chapter 1601 of the Texas Occupations Code. The amendment is adopted without changes to the proposed text as published in April 22, 2005, issue of the *Texas Register* (30 TexReg 2350) and will not be republished.

The amendment is adopted to impose fines (penalties) for violation of §1601.301. The amendment changes the penalty for first offense for failure to have a booth rental permit from "warning" to $100.00.

No comments on the proposed amendment were received.

The amendment is adopted under the Texas Occupations Code §§1601.151, 1601.155, and 1601.171, which provides the Texas State Board of Barber Examiners with the authority to adopt and enforce all rules necessary for the performance of its duties, to set fees in amounts necessary to cover the cost of administering programs to which the fees relate, and to impose administrative penalties for violations of Chapter 1601.

No other code, article, or statute is affected by this amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 27, 2005.

TRD-200502646
Glenn D. Parker
Executive Director
Texas State Board of Barber Examiners
Effective date: July 17, 2005
Proposal publication date: April 22, 2005
For further information, please call: (512) 936-6333

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PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §§214.2, 214.3, 214.9

The Board of Nurse Examiners (Board) adopts amendments to 22 Texas Administrative Code §§214.2, 214.3, and 214.9, concerning Vocational Nursing Education. The amendments are adopted without changes to the proposed text as published in the May 13, 2005, issue of the *Texas Register* (30 TexReg 2822). At the October 2004 Board meeting, a question was raised regarding efficacy of the prior Board of Vocational Nurse Examiners' rule, 22 TAC Chapter 233, and current Chapter 214 which allowed LVNs to be employed as vocational nursing faculty in nursing skills labs, nursing fundamentals theory courses, and clinical instruction in all levels of clinical courses. The Board determined in its April 2005 board meeting that: 1) based on excellent NCLEX passage rates and the recent change in ratios which may affect the vocational nursing programs' economic situation, a "vocational" educational model where LVN mentors are a core component of the program would be advantageous; and

2) LVNs should continue to teach in vocational nursing programs with guidelines formulated by board staff. This adoption implements these findings.

Section 214.3(b)(3), Program Development, Expansion, and Closure, is amended to read, "when the extension program's curriculum deviates from the original program in any way, the proposed extension is viewed as a new program and Board guidelines for a new program apply." For consistency and clarity with §214.3(b)(3), §214.2(39)(C) (Definitions) reads, "a newly created program of study in which the curriculum, teaching resources, or program hours required to complete the program differs from that of the main location." Finally, §214.9(k) is deleted because it conflicts with the intent of §214.6(h) and §214.9(f) and (g).

No comments were received in response to the proposal.

The amendments are adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

These amendments will not affect any existing statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 20, 2005.

TRD-200502544
Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective date: July 10, 2005
Proposal publication date: May 13, 2005
For further information, please call: (512) 305-6823

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CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.6

The Board of Nurse Examiners adopts an amendment to 22 Texas Administrative Code §217.6, Failure to Renew License, addressing late renewal fees as it applies to individuals on active duty in the United States armed forces serving outside the state. The amendment is adopted without changes to the proposed text as published in the May 13, 2005, issue of the *Texas Register* (30 TexReg 2824). Texas Occupations Code §55.002 requires a state agency that issues a license to "adopt rules to exempt an individual who holds a license issued by the agency from any increased fee or other penalty imposed by the agency for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the agency that the individual failed to renew the license in a timely manner because the individual was on active duty in the United States armed forces serving outside this state." In compliance with this requirement, §217.6 is amended by adding subsection (g) and putting into rule the existing policy of the Board. In addition, a few modifications are made to subsections (b) and (c) for clarification only.

No comments were received in response to the proposal.

The amendments are adopted pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

This amendment will comply with and implement Texas Occupations Code §55.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 20, 2005.

TRD-200502545
Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective date: July 10, 2005
Proposal publication date: May 13, 2005
For further information, please call: (512) 305-6823

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

The Texas Parks and Wildlife Commission adopts the repeal of §65.42, amendments to §§65.1, 65.3, 65.10, 65.19, 65.24 - 65.26, 65.56, 65.64, 65.72, and 65.82, and new §65.34 and §65.42, concerning the Statewide Hunting and Fishing Proclamation. The amendments to §65.24 and §65.25, and new §65.42 are adopted with changes to the proposed text as published in the February 25, 2005, issue of the *Texas Register* (30 TexReg 1028). The repeal of §65.42, the amendments to §§65.1, 65.3, 65.10, 65.19, 65.26, 65.56, 65.64, 65.72, and 65.82, and new §65.34 are adopted without changes and will not be republished.

The change to §65.24, concerning Permits, replaces the word "appeal" with the word "review." The change is necessary because use of the term "appeal" could give the impression that the process is a judicial proceeding, which it is not.

The change to §65.25, concerning Wildlife Management Plan (WMP), eliminates proposed new subsection (c), which would have implemented management plan criteria for quail. After deliberating the proposal, the Texas Parks and Wildlife Commission directed staff to remove the proposed new subsection for further refinement.

The change to §65.42 removes Burleson and Milam counties from the provisions of subsection (b)(10) and adds them to the provisions of subsection (b)(11). In the reorganization of the section, Burleson and Milam counties were inadvertently included with the counties with four 'doe days.' The take of antlerless deer in Burleson and Milam counties should be by permit only.

The repeal of §65.42 is necessary to replace the current section with a restructured section that is easier to reference.

The amendment to §65.1, concerning Application, which adds new subsection (c) to specify that the season lengths and bag limits created by the subchapter do not apply to special drawn hunts conducted by the department on units of public lands, is necessary to prevent confusion. Hunting regulations for public hunting lands are established pursuant to Parks and Wildlife Code, Chapter 81.

The amendment to §65.3, concerning Definitions, adds a definition of the term 'unbranched antler.' The amendment is necessary to create an unambiguous standard for enforcement purposes, because another portion of this rulemaking imposes antler restrictions that are conditioned by the term. The amendment also alters the definition of "fishing guide," which is necessary to conform the regulatory definition with the statutory definition in Parks and Wildlife Code.

The amendment to §65.10, concerning Possession of Wildlife Resources, makes the provisions of subsection (b), which exempt persons under certain circumstances from the tagging requirements relative to deer, applicable to mule deer taken by Managed Lands Deer Permit (MLDP). The amendment is necessary because new §65.34 creates a Managed Lands Deer Permit for mule deer and the department intends to make the tagging rules for mule deer the same as those already in existence for white-tailed deer. The department in April of 2004 adopted rules to eliminate 'double tagging' (under previous rules, deer taken on MLDP properties were required to be tagged with both an MLDP tag and a license tag). The amendment requires a single tag to be attached to mule deer taken on MLDP properties. The amendment also clarifies the provisions of subsection (f), which establishes the conditions under which persons may possess wildlife resources in excess of bag limits or that were taken by other persons. The amendment changes subsection (f) to clarify that if a person in possession of a wildlife resource is the person who took the wildlife resource, that person does not need to possess a wildlife resource document, provided the person is in compliance with all other applicable laws. The amendment is necessary to prevent confusion. The amendment also alters the provisions of subsection (h)(4) to insert the effective date of the section, now that it is definitively known. The amendment is necessary for the convenience of persons that may be affected by the effective date of the subsection.

The amendment to §65.19, concerning Hunting Deer With Dogs, removes Hunt and Washington counties from the list of counties where it is unlawful to use dogs to track wounded deer. The amendment is necessary because the department has determined that the practice of hunting deer with dogs (i.e., the use of dogs to hunt deer, rather than track wounded deer), which originally prompted a ban on the use of dogs in some counties, has declined in the named counties to the point that the regulation is no longer required; therefore, the rule is unnecessary.

The amendment to §65.24, concerning Permits, creates a review process for department decisions concerning the issuance of Managed Lands Deer Permits and Antlerless and Spike-buck Control Permits. The proposal is the result of a recommendation by the White-tailed Deer Advisory Committee (WTDAC), a group of deer managers, landowners, and hunters appointed by the Chairman of the Parks and Wildlife Commission to study issues involving white-tailed deer and make recommendations. The amendment allows persons who have been denied issuance of permits to request a review of the decision by a panel of senior TPWD managers. The process allows the department to reverse such decisions upon review, and requires the department to report annually to the WTDAC on the number and disposition of all reviews. The amendment is necessary because the department agrees with the recommendation of the WTDAC.

The amendment to §65.25, concerning Wildlife Management Plan (WMP), creates a set of criteria for wildlife management plans that address lesser prairie chicken. Long-term data indicate a declining population trend for lesser prairie chicken, not only in Texas but also throughout much of their historic range. There is an ongoing multi-state effort to manage the remaining lesser prairie chickens, and the department wishes to begin collecting additional data to assist in that effort. The amendment is necessary to do that. The amendment requires a habitat evaluation, five habitat management practices, and population and harvest data for each property where lesser prairie chicken are to be hunted. By conditioning the hunting of lesser prairie chicken on landowner agreement to manage habitat and harvest, the department is assured that harvest will not exceed biologically acceptable levels. By collecting valuable biological information on a property-by-property basis, the department will be much better able to assist in formulating a strategy for habitat protection and restoration.

The amendment to §65.26, concerning Managed Lands Deer Permits (MLD) Permits, amends the title of the section to reflect that the section affects only white-tailed deer, removes all references to mule deer, and makes several nonsubstantive grammatical changes throughout the section for consistency and simplification. The amendment is necessary to make the section agree with new §65.34, which creates a separate section addressing MLDPs for mule deer.

New §65.34, concerning Managed Lands Deer Permits (MLDP)--Mule Deer, creates an MLDP program for mule deer. In general, the new section will function by creating an incentive-based, habitat-focused permit program to facilitate the management goals of landowners and land managers by providing increased harvest flexibility under department-established harvest quotas and habitat management practices.

New §65.42, concerning Deer, is necessary in general to simplify and restructure regulations governing deer seasons and to manage wildlife resources more effectively in areas where biological data indicate the need for population reduction or control. The new section consists of several actions, as follows.

The new section eliminates aggregate bag limits in counties with one- and two-buck bag limits. The department in 1989 implemented what is popularly referred to as the 'aggregate bag limit' rule, which designated a number of one-buck counties, primarily in the eastern third of the state, from which, in the aggregate, a hunter could take no more than one buck. For example, if a hunter took a buck in Nacogdoches County (one-buck bag limit), that hunter could not take another buck in any other county affected by the aggregate bag limit rule. At the time, the department's intent was to prevent the overharvest of buck deer in regions of the state where populations were low or hunting pressure was high with respect to abundance. In 1999, in an effort to increase hunter opportunity, the department separated the aggregate one-buck counties into two zones divided by Interstate Highway 35, allowing a hunter to harvest a buck from each zone. Harvest and population data from counties on either side of the I-35 dividing line, counties which by their proximity to each other were the likeliest to incur greater buck harvest, indicates no significant deviation from historical trends over the period from 1999

to the present. The department is therefore eliminating the aggregate bag limit, meaning that a hunter could take the statewide personal bag limit of three bucks by taking one buck in each of three one-buck counties. A similar provision applied to counties with a two-buck bag limit (i.e., a hunter could take one buck in two two-buck counties, or two bucks in a single two-buck county, but could not take a third buck in another two-buck county). The department's concern in this case was that hunters would focus on taking a third buck, which could lead to an unwanted decline in doe harvest. Analysis of harvest data indicates that this concern may not be as pressing as originally thought; therefore, the aggregate two-buck bag limit is being eliminated as well. Therefore, this portion of the new section is necessary to reduce regulatory complexity.

The new section also implements alterations of 'doe-day' (time periods when it is lawful to take antlerless deer without a permit) rules. Prior to this rulemaking, there were five 'doe day' packages: 4, 9, 16, 23, or 23-plus days (the 23-plus package allows the take of does until the Sunday following Thanksgiving, which means the package length varies from year to year). The new section would eliminate the 9- and 23-day 'doe day' packages and increase the number of 'doe days' in many counties, and introduce 'doe days' in some counties where the take of antlerless deer currently is by permit only until now.

The new section implements four 'doe days' to take place from Thanksgiving Day to the Sunday immediately following Thanksgiving Day in Bowie, Camp, Delta, Fannin, Franklin, Grayson, Hopkins, Lamar, Morris, Red River, Titus, Upshur, and Wood counties, where antlerless take prior to this rulemaking was by permit only (i.e., there were no 'doe days'). The change is necessary to control increasing deer numbers and has the additional benefit of increasing hunter opportunity. Over the past ten years, deer populations in the affected counties have increased. Analysis of herd composition data in the affected counties shows a decreasing trend in the number of does per buck; however, the ratio remains unacceptably high, at approximately 4 - 5 does per buck (the target ratio is 1 - 2 does per buck). Hunter numbers in the affected counties have dropped considerably during the same time period, to about three-quarters of the total reported in 1993. These trends indicate that additional harvest is necessary to stabilize herd growth and protect habitat. The additional 'doe days' will allow the remaining hunters to more effectively manage population size and sex ratio.

The new section also increases the number of 'doe days' in Cass, Harrison, Marion, Nacogdoches, Panola, Sabine, San Augustine, and Shelby counties from four to 16. The action is necessary because department data indicate that deer populations in the affected counties remain above desired densities, sex ratios are becoming increasingly skewed, and, due to uncharacteristically wet and warm winters, fawn recruitment has increased significantly, which means that habitat degradation is imminent if deer populations are maintained at current levels. In addition, harvest has decreased slightly, which is additive to the potential problem. By increasing the antlerless harvest, the department intends to limit additional population growth in order to bring the deer population into equilibrium with habitat, provide additional hunter opportunity, and deflect some harvest pressure away from the younger age classes of the buck segment of the population in order to eventually bring sex ratios back to a biologically sound proportion.

The new section implements full-season, either-sex hunting in a number of counties in the Panhandle and northern Rolling Plains. Prior to this rulemaking, Armstrong, Borden, Briscoe, Carson, Crosby, Fisher, Floyd, Foard, Hall, Hansford, Hutchinson, Jones, Knox, Ochiltree, Randall, Stonewall, and Swisher counties had 16 'doe days' and Childress, Collingsworth, Cottle, Dickens, Donley, Garza, Gray, Haskell, Hemphill, Kent, King, Lipscomb, Motley, Roberts, Scurry, and Wheeler counties had 23-plus 'doe days.' This portion of the new section is necessary because although distribution and population densities vary in these counties, the data from the majority of counties indicate a moderate to significant upward trend in deer populations over the last 13 years. Harvest data indicate a conservative harvest of antlerless deer in these counties. Given the population growth and historically moderate hunting pressure, the department anticipates that full-season either-sex hunting will provide additional hunter opportunity and enable more effective management of antlerless deer for habitat conservation while resulting in neither depletion nor waste.

The new section also increases the number of 'doe days' in Hardeman, Wichita, and Wilbarger counties from 16 to 23-plus. The change is necessary because survey results indicate that deer populations in those counties have increased over the past ten years. These counties had six 'doe days' from 1996 to 1999 and 16 'doe days' from 2000 to the present. Due to the fact that populations are increasing, the department believes that additional antlerless opportunity is required to allow managers to effectively manage antlerless deer populations, which should reduce potential negative habitat impacts.

The new section also increases the number of 'doe days' in Denton and Tarrant counties from nine to 16. The change is necessary because data indicate that the deer populations in these counties have increased significantly over the past ten years. These counties have had nine 'doe days' since 1996, but due to fragmented habitat patterns and relatively low hunter effort, the harvest of antlerless deer has been insufficient to prevent overpopulation and resultant habitat degradation. By increasing the number of 'doe days,' the department hopes to give land managers additional flexibility to deal with population growth where it is a problem, and to create additional hunter opportunity.

The new section also increases the number of 'doe days' in Cooke, Hill, and Johnson counties from nine to 23-plus days. The change is necessary because survey data indicate a significant upward population trend since 1996, during which time these counties had nine 'doe days.' The department has determined that, given the increase in deer populations, the current number of 'doe days' is insufficient to prevent habitat degradation in those counties and must be increased. Prior to 1996, these counties had two 'doe-days.' In the decade that these counties had nine 'doe days,' the estimated harvest did increase, but has remained below acceptable levels. Hunter densities have remained low to moderate and are expected to remain stable; thus, an increase in the antlerless harvest is desirable for population control/habitat management, with the additional benefit of providing additional hunter opportunity.

The new section also alters the 'doe day' structure in Brazoria, Fort Bend, Goliad (south of U.S. Highway 59), Jackson (south of U.S. Highway 59), Matagorda, Victoria (south of U.S. Highway 59), and Wharton (south of U.S. Highway 59) counties. Prior to this rulemaking, these counties had a fixed-length 'doe day' season of 23 days. The new section implements 23-plus 'doe days' to make rules governing antlerless harvest consistent with those in a number of adjoining counties to the east. The new

section is intended only to reduce regulatory complexity and will not result in depletion or waste of the resource.

The new section also alters regulations governing the take of buck deer in Austin, Bastrop, Brazoria, Caldwell, Colorado, De Witt, Fayette, Fort Bend, Goliad, Gonzales, Guadalupe, Jackson, Karnes, Lavaca, Lee, Matagorda, Victoria, Waller, Washington, Wilson, and Wharton counties. Hunting pressure in the Post Oak Savannah ecological region has been excessive for more than 30 years. Hunter-harvest survey data collected by the department indicates that this area has some of the highest hunter densities in the state. In 1971, the department instituted a one-buck bag limit in an effort to reduce pressure on the buck segment of the population. Although the one-buck bag limit successfully redistributed hunting pressure, it did little to reduce overall buck harvest. Department data indicate that prior to 2002, 80% of the buck harvest in these counties was comprised of bucks younger than 3.5 years of age. In response to requests from concerned landowners and hunters in the area, the department in 2002 implemented what at the time were called 'experimental' antler restrictions, which defined a legal buck as a buck with at least one unbranched antler (typically a spike buck), a buck with at least six antler points on one side, or a buck with an inside spread of 13 inches or greater. The rules were designed to protect the majority of bucks in the younger cohorts until those deer could reach a level of physical maturity. After three years under the experimental rules, the department's intensive survey effort indicates that the percentage of harvested bucks younger than 3.5 years of age had dropped from 80% to 29% and the percentage of harvested bucks 3.5 years of age and older increased from 20% to 71%. Additionally, after a first-year decline of 38%, buck harvest increased by 71% in the second year of the experimental rules. These data also show a decline in the harvest of spike bucks and an increase in the harvest of bucks with an inside spread of 13 inches or greater, which means that one effect of maintaining a one-buck limit under the antler restrictions is that hunting pressure is deflected from the spike-buck segment of the population, which is undesirable. The new section implements a two-buck bag limit, one of which must have at least one unbranched antler, and redefines a legal buck as a buck having an inside spread of 13 inches or greater or at least one unbranched antler. The six-points-or-better criterion in effect prior to this rulemaking is eliminated, as department data clearly indicate that the 13-inch-or-better standard is sufficient by itself to protect younger bucks. Eliminating the 6-points-or-better criterion simplifies the regulation, while resulting in a negligible decline in mature-buck harvest. By adding a second buck to the bag while requiring at least one buck to have an unbranched antler, the department intends to encourage the harvest of spike bucks which department research has indicated are less likely to develop into lawful bucks.

The amendment to §65.56, concerning Lesser Prairie Chicken: Open Seasons, Bag, and Possession Limits, allows the hunting of lesser prairie chicken only on properties for which the department has approved a wildlife management plan that contains specific provisions for lesser prairie chicken conservation. Long-term data indicate a declining population trend for lesser prairie chicken, not only in Texas but also throughout much of their historic range. Current hunter-harvest surveys indicate that fewer than 200 lesser prairie chickens are harvested annually in Texas. Staff attributes the decline in lesser prairie chicken numbers primarily to habitat loss, not hunting. Nonetheless, because there is an ongoing multi-state effort to manage the remaining lesser prairie chickens, the implementation of an extremely conservative hunting regime is necessary. The amendment also eliminates the lesser prairie chicken hunting permit. The permit was implemented to allow the department to survey prairie chicken hunters. With the implementation of hunting under management plans, the department would no longer need to survey hunters to determine harvest numbers, as that information will now be supplied by the landowner as part of the management plan.

The amendment to §65.64, concerning Turkey, consists of several actions intended to create regulatory simplification by standardizing turkey seasons, bag limits, and bag composition where possible without resulting in depletion or waste.

The amendment alters the fall season for Rio Grande turkey in Archer, Bandera, Bell, Bexar, Blanco, Borden, Bosque, Burnet, Clay, Comal, Comanche, Cooke, Coryell, Denton, Erath, Gillespie, Goliad, Gonzales, Hamilton, Hays, Hill, Hood, Jack, Johnson, Karnes, Kendall, Kerr, Lampasas, Llano, McLennan, Montague, Palo Pinto, Parker, Real, Somervell, Stephens, Travis, Wichita, Williamson, Wilson, Wise, and Young counties by changing the bag composition from 'gobblers or bearded hens' to 'either sex.' The amendment is necessary to simplify and standardize turkey regulations. Current rates of fall hen harvest in the Rolling Plains and western Edwards Plateau have not negatively affected turkey population density. Therefore, fall hen harvest in the Cross Timbers and eastern Edwards Plateau should not negatively affect the population, assuming harvest rates (as a percentage of fall hen population) do not exceed that of the Rolling Plains and/or Edwards Plateau (approximately 3.4% of the hen population). Most of the turkey populations in east-central Texas are located on large ranches with suitable riparian corridors. Harvest in these counties should be very similar to the harvest in counties that currently enjoy either-sex bag composition.

The amendment also creates a standard turkey regulation north of Highway 90 and a standard turkey regulation south of Highway 90 in Kinney, Medina, Uvalde, and Val Verde counties, which is necessary to reduce regulatory complexity. Prior to this rulemaking, Kinney, Uvalde, and Val Verde counties had an either-sex bag composition for turkey, while in Medina County the bag composition was gobblers or bearded hens. The northern portions of these counties are part of the Edwards Plateau ecoregion, while their southern portions are part of the South Texas Brush Country ecoregion. Because of this difference, the northern portion of these counties have a deer season that runs two weeks shorter than in the southern portion of these counties. For enforcement simplicity and reduction of landowner and hunter confusion, the department has used U.S. Highway 90 as a dividing line. To standardize regulations, the amendment must accommodate the department's long-standing policy of maintaining concurrent deer and turkey seasons. In order to both preserve the concurrency of deer-season length and standardize turkey regulations, it is therefore necessary for the portion of these counties north of Highway 90 to have the either-sex bag composition, while the bag composition south of Highway 90 must be gobblers or bearded hens to be consistent with the bag composition in the remainder of south Texas. In Medina County, the bag composition north of Highway 90 will shift from gobblers or bearded hens to either-sex. By any other arrangement, the department would be creating a regulatory 'island' of four counties with a different set of regulations from all surrounding counties, which the department is anxious to avoid in order to prevent confusion. The amendment will not result in depletion or waste

of the resource. Properly managed fall turkey seasons for the most part result in the removal of surplus birds from the population, birds that would probably be lost to other causes. Thus, mortality due to hunting is compensatory and is not in addition to mortality from natural causes.

The amendment also affects spring seasons for Rio Grande turkey. Prior to this rulemaking there were 140 counties with a spring season for Rio Grande turkey. With the exception of Bastrop, Caldwell, Colorado, DeWitt, Fayette, Guadalupe, Jackson, Lavaca, Lee, Milam, and Victoria counties (where the bag limit is restricted to one gobbler), the bag limit in those 140 counties was identical: four turkeys, gobblers only. The only variation among the seasons in the 140 counties was the date of opening day. In Archer, Armstrong, Bandera, Baylor, Bell, Blanco, Borden, Bosque, Brewster, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Ellis, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Lipscomb, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Val Verde, Ward, Wheeler, Wichita, Wilbarger, Williamson, Wise, and Young counties, the spring turkey season began the first Saturday in April and ran for 37 consecutive days. In Aransas, Atascosa, Bee, Bexar, Brooks, Calhoun, Dimmit, Duval, Frio, Goliad, Gonzales, Hidalgo, Jim Hogg, Jim Wells, Karnes, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina, Nueces, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, and Zavala counties, the spring turkey season began the last Saturday in March and likewise ran for 37 consecutive days. The amendment creates a single season for all counties with a four-turkey bag limit, to run from the Saturday closest to April 1 for 44 consecutive days. The amendment is necessary to simplify regulations while still maintaining the agency's statutory duty to prevent depletion or waste of the resource. The new season structure is extremely unlikely to exert a negative effect on turkey populations, as the harvest is limited to male birds and the timing of the season is calculated according to breeding chronologies to ensure that the overwhelming majority of hens have been bred before the season opens.

The amendment also opens a fall season in Tarrant County and both spring and fall seasons in Cameron and Zapata counties. Most of the suitable turkey habitat in Tarrant, Cameron, and Zapata counties is located on large ranches with suitable riparian corridors. Harvest in these counties during the spring and fall seasons should be very similar to harvest in surrounding counties. The amendment is necessary to increase opportunity.

The amendment also alters the spring season for Rio Grande turkey in Bastrop, Caldwell, Colorado, DeWitt, Fayette, Guadalupe, Jackson, Lavaca, Lee, Milam, and Victoria counties. Prior to this rulemaking, the spring season began the first Saturday in April and ran for 37 consecutive days. The amendment replaces that season with one beginning April 1 and ending April 30. The bag limit would remain at one gobbler. Since the spring season is limited to only male birds (gobblers) there is little potential harm to turkey production, since the harvest will not affect bred hens. The amendment is necessary to reduce regulatory complexity and increase hunter opportunity.

The amendment also implements a spring youth-only seasons for Rio Grande turkey to take place the weekends immediately preceding and following the open season. The change is necessary to continue to advance long-standing department policy to encourage and foster youth in the sport of hunting by creating mentoring opportunities. The amendment will not result in depletion or waste, since hunter success and overall harvest resulting from youth-only hunting is expected to be statistically insignificant.

The amendment to §65.72, concerning Fish, changes the harvest regulations for red drum on Lake Nasworthy (Tom Green County) from the current 20-inch minimum length limit and daily bag limit of three fish, to no length and no bag limit. The change is necessary because the power plant on Lake Nasworthy is being closed. Without the power plant's discharge of warm water during the winter months, red drum will have little chance of survival; thus, the department would like to provide the additional harvest opportunity to anglers.

The amendment also changes the rules for channel catfish and blue catfish on the North Concho and South Concho rivers in Tom Green County. The change implements a five-fish daily bag limit (in any combination), with no minimum length limit. Legal devices would be restricted to pole and line angling only. The amendment affects the North Concho from O.C. Fisher Dam to Bell Street Dam and the South Concho from Lone Wolf Dam to Bell Street Dam. The amendment is necessary to reduce confusion as to the boundaries for areas to which special regulations apply and to allow increased opportunity for harvest and use of other gear types on portions of the South Concho River.

The amendment also eliminates the minimum length limit for spotted bass on Toledo Bend Reservoir (Newton, Panola, Sabine, and Shelby counties). Toledo Bend Reservoir lies in both Texas and Louisiana. The change is necessary to create a standard regulation to facilitate enforcement and reduce angler confusion in both states.

The amendment to §65.82, concerning Other Aquatic Life, establishes a closed season from November 1 - April 30 of the following year for taking live, shell-bearing mollusks (or their shells), starfish, or sea urchins within an area bounded by the bay and pass sides of South Padre Island from the East end of the north jetty at Brazos Santiago Pass to the West end of West Marisol drive in the town of South Padre Island, out 1,000 yards from the mean high-tide line, and bounded to the south by the centerline of the Brazos Santiago Pass. A study conducted on the harvest of shell-bearing organisms in the lower Laguna Madre identified the November - May period as the most critical due to the extensive sand/mud flat that is exposed by winter low tides, coupled with easy access by large numbers of fishery participants. This area is biologically diverse due to its proximity to the shallow lower Laguna Madre and the deep water of Brazos Santiago Pass and the Gulf of Mexico. The area is utilized by some species of invertebrates at varying stages of their life histories during movement to or from the Gulf of Mexico. Shell-bearing mollusks in this area produce shells that are utilized by the thinstripe hermit (the species most often taken by fishery participants--79% of individuals harvested during the study period), which are subsequently transported to deeper water for use by deep water species of hermit crabs such as the flat claw hermit

and giant hermit. Some of the most sought-after and easily located shells in this area are the reproducing mollusks, which can be conspicuously exposed during low tide. Harvest of organisms at reproductive aggregations or during reproduction can exacerbate the effects that harvest exerts on a population. The amendment is necessary to provide needed protection during a critical biological time.

The amendment also implements an aggregate bag limit of 15 live univalve snails (all species), to include no more than two of each of the following species: lightning whelk, horse conch, Florida fighting conch, pear whelk, banded tulip, and Florida rocksnail. Research indicates that fishery participants harvest an average of 31 organisms per day, of which 20% (6.2 individuals) are live, shell-bearing mollusks. The bag limit represents slightly more than twice the average take of live, shell-bearing mollusks. The bag limit is expected to have a minimal impact on the average fishery participant, but would limit those intending to take large numbers of live organisms. The individual species listed are highly desired by fishery participants and easy to locate due to their habitat preference and/or reproductive habits thus making them more vulnerable to harvest. The amendment is necessary to provide needed protection for the species.

The amendment to §65.1 will function by clarifying that the season lengths and bag limits created by the subchapter do not apply to special drawn hunts conducted by the department on units of public lands.

The amendment to §65.3 will function by defining 'unbranched antler' and 'fishing guide.'

The amendment to §65.10 will function by creating special tagging requirements for persons taking mule deer under certain circumstances, by clarifying that a person in possession of wildlife resource taken by that person is not required to also possess a wildlife resource document, and by specifying the effective date of subsection (h)(4).

The amendment to §65.19 will function by removing Hunt and Washington counties from the list of counties where it is unlawful to use dogs to track wounded deer.

The amendment to §65.24 will function by establishing a review process for department decisions concerning the issuance of Managed Lands Deer Permits and Antlerless and Spike-buck Control Permits.

The amendment to §65.25 will function by creating a set of criteria for wildlife management plans that address lesser prairie chicken.

The amendment to §65.26 will function by restricting the applicability of the section to white-tailed deer.

New §65.34, will function by creating an incentive-based, habitat-focused permit program for mule deer in order to facilitate the management goals of landowners and land managers by providing increased harvest flexibility under department-established harvest quotas and habitat management practices. Specifically, the new section will function by: requiring an approved wildlife management plan (WMP) for permit issuance; establishing the minimum content of a WMP in terms of landowner-supplied data and habitat improvement practices; specifying the period of validity for permits and requirements for their use; providing for the waiver of regulatory requirements in the event of extenuating circumstances such as droughts and floods; establishing the conditions under which the department may exercise the right to cease issuing permits to individuals; and specifying an annual deadline for permit applications.

New §65.42 will function by establishing the open seasons, bag limits, permit requirements, and special provisions for the hunting of deer in the state.

The amendment to §65.56 will function by allowing the hunting of lesser prairie chicken only on properties for which the department has approved a wildlife management plan that contains specific provisions for lesser prairie chicken conservation.

The amendment to §65.64 will function by standardizing turkey seasons, bag limits, and bag composition.

The amendment to §65.72 will function by removing restrictions on length and bag limit for red drum on Lake Nasworthy (Tom Green County); implementing a five-fish daily bag limit (in any combination), with no minimum length limit, for channel catfish and blue catfish on the North Concho and South Concho rivers in Tom Green County; and eliminating the minimum length limit for spotted bass on Toledo Bend Reservoir (Newton, Panola, Sabine, and Shelby counties).

The amendment to §65.82 will function by establishing a closed season from for the take of live, shell-bearing mollusks (or their shells), starfish, or sea urchins, and by implementing an aggregate bag limit of 15 living univalve snails (all species), to include no more than two of each of the following species: lightning whelk, horse conch, Florida fighting conch, pear whelk, banded tulip, Florida rocksnail.

The department received 20 comments opposing adoption of the proposed amendment to §65.10, concerning Possession of Wildlife Resources, which modifies the tagging requirements for mule deer. The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

One commenter stated that the department should be promoting the participation of more people in harvesting surplus animals instead of allowing a smaller number of people to have exclusive use of the publicly-owned wildlife resource. The department disagrees with the comment and responds that the rule does not in any way restrict anyone's ability or right to engage in the harvest of deer, neither does it grant privileges not available to anyone. The rule is intended to simplify tagging requirements for the convenience of constituents by requiring hunters to furnish only one form of documentation that a deer was lawfully killed. No changes were made as a result of the comment.

One commenter stated that both the license tag and the permit should be required to be attached to a carcass. The department disagrees with the comment and responds that in the department's view there is no reason to require hunters to furnish the same information twice. No changes were made as a result of the comment.

One commenter stated that the Managed Lands Deer (MLD) program "has the effect of excluding multitudes of common hunters by allowing wealthy landowners to harvest almost unlimited numbers of deer in an effort to raise trophy animals. Since they are not limited to the number of tags on their licenses as the rest of us are, their managers or game biologists harvest untold numbers of deer that would otherwise have to be thinned by lease hunters. The program has a definite detrimental effect on the common hunter while benefiting only the wealthy. A study should be done to see exactly who is utilizing this program. I think it would show that the common paying hunter does not benefit at all, and in fact

is being squeezed out of hunting in part by this practice." The department disagrees with the comment and responds that the intent of rulemaking is to simplify tagging requirements for the convenience of constituents by requiring hunters to furnish only one form of documentation that a deer was lawfully killed. The portion of the comment addressing the intent and the efficacy of the MLD program is not germane to the rulemaking; nonetheless, the department disagrees and responds that the intent of the MLD program is to encourage effective habitat management. Data indicate that current levels of harvest in many parts of the state (and particularly those parts of the state with detrimentally high deer densities) are inadequate in reducing deer populations to desired levels. The MLD program is designed to afford concerned landowners and land managers an effective tool in controlling populations. No changes were made as a result of the comment.

One commenter stated that deer killed outside of the general open season should be required to be tagged with both a license tag and a permit. The department disagrees and responds that as long as a deer is lawfully taken, there is no reason to require hunters to furnish the same information twice, irrespective of when the deer is taken. No changes were made as result of the comment.

One commenter stated that the amendment would prevent enforcement of bag limits. The department disagrees with the comment and responds that there are no personal bag limits on MLD properties. No changes were made as a result of the comment.

The department received 189 comments supporting adoption of the proposed amendment.

The department received 70 comments opposing adoption of the proposed amendment to §65.19, concerning Hunting Deer With Dogs, which removes Hunt and Washington counties from the list of counties where the use of dogs to trail wounded deer is prohibited. The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

One commenter stated that the use of dogs to hunt deer should be prohibited. The department agrees with the comment and responds that it is unlawful to hunt deer by the use of dogs anywhere in the state. No changes were made as a result of the comment.

Two commenters stated that the use of dogs to trail wounded deer should not be allowed. The department disagrees with the commenter and responds that the practice of using hounds to trail wounded deer has been lawful for many years in most counties in the state and has not been a problem. The department has prohibited the use of dogs only in counties where there have been problems with people using dogs to hunt deer. No changes were made as a result of the comments.

Five commenters stated that if the prohibition is lifted then the original problem will return. The department disagrees with the comment and responds that in the counties where the use of dogs to trail wounded deer is now allowed after having been prohibited, there have been no indications that hunting deer with dogs is a problem again. The department removes counties from the list only when recommended by law enforcement personnel and will not hesitate to reinstate the prohibition in any county when necessary. No changes were made as a result of the comments.

One commenter stated that even if hunting deer with dogs in these two counties has declined, the regulation should be left on the books and asked why these two counties should be exempt. The commenter stated that the proposal was highly suspicious. The department disagrees with the comment and responds that the two counties are not being selected on any basis other than that the incidence of the illegal use of dogs has declined to the point that the justification for the rule no longer exists. No changes were made as a result of the comment.

One commenter stated that running deer with dogs is a problem in East Texas and that all dogs used to trail wounded deer should be required to be kept on a leash. The department agrees with the comment to the extent that in a number of counties in East Texas it is unlawful to have dogs in the field while hunting deer. The department disagrees that dogs should be required to be leashed when used to trail wounded deer, and responds that in thick brush or brakes a leash makes it much more difficult to locate a wounded deer. No changes were made as a result of the comment.

Nine commenters stated that hunting deer with dogs should not be allowed. The department agrees with the comment and responds that using dogs to hunt deer is unlawful in every county in the state; the rule as adopted does not allow the hunting of deer with dogs, only the use of dogs to trail wounded deer. No changes were made as a result of the comments.

One commenter stated that instead of removing this provision, the department should allow the tracking of wildlife that have been wounded during a lawful attempt to take the animal. The department agrees with the comment and responds that the rule allows dogs to be used to track wounded animals only. No changes were made as a result of the comment.

One commenter stated that dogs should be allowed to be used to track deer in all counties or none. The department disagrees with the commenter and responds that a blanket prohibition would penalize hunters in areas of the state where the use of dogs to hunt deer historically has not been a significant problem. Similarly, a blanket permission would (and has) led to abuses. Therefore, the department has applied the regulation selectively as needed. No changes were made as a result of the comment.

The department received 145 comments supporting adoption of the proposed amendment.

The department received 23 comments opposing adoption of the proposed amendment to §65.24, concerning Permits, which created a review process for department decisions concerning the issuance of Managed Lands Deer (MLD) permits and Antlerless and Spike-buck Control Permits (control permits). The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

One commenter stated that the department would deny permits to people and then charge a fee. The department disagrees with the comment and responds that there is no statutory authority to charge fee for MLD or control permits. No changes were made as a result of the comment.

One commenter stated that "if the system as exists does its' field work prior to the seasons during which the animals in question may be taken, the recommendations for harvest and tag issuance should not be compromised by an appeals process." The department is unable to determine the point of the comment, but disagrees that a change is warranted. No changes were made as a result of the comment.

One commenter stated that if the denial of permits can result in appeals that can be overturned, then the approval of permits should also be allowed to be appealed. The commenter further stated that the proposal was just another way for persons (hunters) who have been denied to gain access to a resource they should not be allowed to have access to. The department disagrees with the comment and responds that a review process for permits that have been approved is unnecessary, since permits are approved only on the basis of biological evaluation. The department also responds that the harvest totals authorized by MLD and control permits are determined by the department, not the landowner, and that nothing prohibits a non-participating landowner from using hunters to harvest as many deer as they desire during the open season. No changes were made as a result of the comment.

The department received 168 comments supporting adoption of the proposed amendment.

The department received 14 comments opposing adoption of the amendments to §65.25, concerning Wildlife Management Plan (WMP) and §65.56, concerning Lesser Prairie Chicken: Open Seasons, Bag, and Possession Limits, to allow the hunting of lesser prairie chicken only on properties with department-approved management plans. The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

One commenter stated that the additional costs associated with habitat evaluations, management and obtaining permission to hunt the lesser prairie chicken might lead to greater hunting pressure due to commercialization as a means to offset the costs imposed on the landowner. The department disagrees with the comment and responds that in order to be allowed to hunt prairie chicken at all, a landowner would be required to accept a department-imposed harvest limit tailored to the specific property. Therefore the probability of hunting pressure at levels high enough to cause biologically injurious harvest is highly unlikely. No changes were made as a result of the comment.

Two commenters stated that the hunting of prairie chicken should not be allowed at all. The department disagrees with the comment and responds that although population trends indicate a long-term decline, the reason is habitat loss, not hunting. Therefore, the department believes it is acting prudently by allowing hunting only under a biologically sustainable, department-dictated harvest quota only on specific properties. No changes were made as a result of the comments.

One commenter stated that habitat management and data collection should occur prior to the authorization for hunting prairie chicken. The department disagrees with the comment and responds that because the existing prairie chicken habitat is well known to the department and annual harvest totals are quite low, the harvest recommendations made by the department on each property will be well within biologically acceptable parameters. No changes were made as a result of the comment.

Two commenters stated that the department had no way of ensuring compliance or of preventing overharvest. The department disagrees with the comment and responds that by agreeing to a management plan, a landowner is agreeing to be monitored by the department and is legally responsible to abide by the terms and conditions established by the department, as is the case in all managed-lands scenarios. The department is confident that if abuses occur they will be detected and addressed appropriately. No changes were made as a result of the comments.

One commenter stated that no hunting of lesser prairie chicken should be permitted until the species is taken off the list of endangered species. The department disagrees with the comment and responds that the lesser prairie chicken is not listed by Texas or the federal government as endangered. No changes were made as a result of the comment.

One commenter stated that hunting of lesser prairie chicken should be suspended based on concern for population decline and extremely low harvest counts. The commenter also stated that current population sizes do not provide ample opportunity for all hunters in the state and that the amendment in effect is for a few individuals. The commenter also stated that a study needs to be conducted to analyze the number of bird watchers versus hunters concerned for the species and the resultant economic activity. The department disagrees with the comment and responds that although trends indicate a long-term population decline, it is due to habitat loss, not to hunting. The department also responds that populations of wildlife are not and cannot be uniformly distributed for the convenience of hunters. Various species have evolved to survive in specific systems and therefore do not occur where they cannot survive. It is an established fact, backed by empirical evidence, that all attempts to introduce wildlife species in systems they cannot survive will result in failure; therefore, species can only be hunted in the systems where they exist. That being the case, the department promulgates season lengths and bag limits on the basis of ensuring that populations are not reduced below their immediate recuperative potential in native ecosystems, not on the basis of the needs of individual landowners. The department further responds that the enjoyment of wildlife is not an either-or scenario between ecotourism and hunting. No changes were made as a result of the comment.

One commenter stated that the amendment imposes a cost on the landowner for data collection and that the department should include landowner incentives. The department disagrees with the comment and responds that participation is voluntary, not required, and that as is the case for providing all other hunting opportunity in the state, the incentive to the landowner is determined by demand, not by regulation. No changes were made as a result of the comment.

The department received 170 comments supporting adoption of the amendment.

The department received 1,567 comments opposing the adoption of new §65.34, which established a Managed Lands Deer Permit program for mule deer. The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

Six commenters stated that mule deer populations were in a precarious state due to long-term drought and that the department should shorten the existing season until populations recover. The department disagrees with the comments and responds that the desert mule deer has evolved over many thousands of years for survival in a desert ecosystem. Typically, populations in such systems expand and contract in response to climatic changes such as drought. However, the presence or absence of water is not the only limiting factor. Competition from domestic stock, changes in land-use patterns, and long-term

habitat alterations all probably exert more influence on deer populations than does rainfall. No changes were made as a result of the comments.

Five commenters stated that participation in the program was not voluntary because people would be forced to participate in order to maintain parity with neighboring properties. The department disagrees with the comment and responds that participation in the MLD program is voluntary. There is no legal requirement compelling any person to participate in the program. While it is true that participating properties will enjoy a longer time period to accomplish harvest goals, it must be remembered that the harvest goal is biologically determined by the department and not at the discretion of the landowner. No changes were made as a result of the comments.

Eight commenters stated that the department lacked the scientific justification for promulgating the rule. The department disagrees with the comments and responds that under current regulations, the take of antlerless mule deer is by permit only, meaning that the department absolutely controls the number of antlerless deer taken each year. The department places no restrictions on any landowner as to the number of buck mule deer that may be taken. The MLD program, because it imposes a finite harvest quota (i.e., X number of bucks and Y number of antlerless) on a participating acreage, is more restrictive than what is allowed otherwise. Scientifically, it is axiomatic that a dictated harvest, based on evaluations of population and habitat, is more scientifically efficacious than an indeterminate and undocumented harvest. No changes were made as a result of the comments.

Seven commenters stated that allowing bucks to be taken during the rut would result in overharvest or decimation of deer herds because bucks are vulnerable at that time. The department disagrees with the comment and responds that overharvest would be possible only in the case of unlimited harvest during the rut. The rule as adopted requires a participating landowner to agree, under penalty of law, to abide by a specific harvest quota biologically determined by the department for the specific property. Since the harvest quota would be derived from a careful assessment of habitat and deer population, the probability of lawful overharvest is negligible. No changes were made as a result of the comments.

Four commenters stated that the rule usurped private property rights. The department disagrees with the comments and responds that no provision of the rule as adopted abridges, interferes with, or negates any privilege or right of ownership. No changes were made as a result of the comments.

Two commenters stated that the extended season allowed by the new rule would cause an increase in poaching. The department disagrees with the comment and responds that a person's decision to violate the law by poaching is not predicated on whether or not the season is open. No changes were made as a result of the comments.

Two commenters stated that wealthy landowners would be able to draw deer from neighboring properties owned by less-wealthy people. The department disagrees with the comments and responds that the financial wherewithal of landowners is not a factor in the intended effect of the rule. The department notes that supplemental feeding practices are not regarded as an acceptable habitat management practice for purposes of the rule, meaning that the harvest quota for a given property will be based strictly on the relationship between deer populations and natural habitat. The department also notes that the adoption of new rule does not affect the fact that under current law, no landowner is prohibited from feeding wildlife if they so choose. No changes were made as a result of the comments.

Five commenters stated that since mule deer are different than white-tailed deer, and because elevation, habitat, and rainfall in West Texas are different from the parts of the state where white-tailed deer are the predominant deer species, that the MLD program is biologically inappropriate for mule deer. The department disagrees with the comments and responds that the MLD program is not based on the biology of white-tailed deer, but on the concept that an individual wildlife management plan tailored for a specific property is an extremely useful tool for landowners and land managers. No changes were made as a result of the comments.

One commenter stated that allowing the take of deer during the rut violates the ethic of 'fair chase.' The department disagrees with the comment and responds that the department does not possess the statutory authority to promulgate regulations on the basis of 'fair chase.' The department further notes that if a landowner disapproves of hunting during the rut, that landowner may choose not to do so or permit others to do so on that person's land. No changes were made as a result of the comment.

One commenter stated that many small-acreage landowners would not qualify for permits and therefore would not be able to hunt any more. The department disagrees with the comment and responds that participation in the MLD program is voluntary, but there is no minimum acreage requirement for participation in the program. Persons choosing not to participate would still be able to hunt under the county regulations during the archery and general open seasons. No changes were made as a result of the comment.

One commenter stated that the rule discriminated against small landowners. The department disagrees with the comment and responds that small landowners will have exactly the same options as any other landowner. No changes were made as a result of the comment.

One commenter stated that the rule should not be adopted because the department had not conducted an environmental assessment. The department disagrees with the comment and responds that an environmental assessment is neither required nor necessary. The implementation of the rule will not result in depletion or waste of the resource. No changes were made as a result of the comments.

One commenter stated that landowners without the resources to exploit the longer season would be at a disadvantage. The department disagrees with the comment and responds that participation in the MLD program is voluntary. No changes were made as a result of the comment.

One commenter stated that the rule would impose the wishes of a few people over those of the majority. The department disagrees with the comment and responds that the rule implements a voluntary program; no person is required to participate. The department further notes that public comment received by the department overwhelmingly favored adoption of the proposed new section. No changes were made as a result of the comments.

One commenter stated that the department was ignoring the recommendations of its own biologists. The department disagrees with the comment and responds that while it will always strive to be sensitive to the social and cultural ramifications of potential

regulations, the rule as adopted does not conflict with the tenets of sound wildlife management and will not result in either depletion or waste of the resource. No changes were made as a result of the comment.

One commenter stated that if the requirement for attachment of a mule deer tag from the hunting license tag to harvested deer was not retained, the rule would not promote the recruitment of additional hunters to harvest the available surplus of a publicly-owned wildlife resource. The department disagrees with the comment and responds that the intent of the new section is to allow land managers and landowners to more effectively manage mule deer populations. The department also notes that landowners who choose not to participate in the program (which requires the acceptance of a department-mandated harvest quota) would be able to take as many buck deer as desired. In either case, harvested deer are required to be tagged, either with a license tag, or with an MLD permit. No changes were made as a result of the comment.

One commenter stated that the 45 days of hunting allowed on MLDP properties will leave a lot more room for mistakes. The commenter also stated that the property rights of both the landowners involved in the program and not involved in the program will be at risk of being abused. The department disagrees with the comment and responds that the department specifies the maximum number of deer to be harvested on each MLDP property, based on habitat and population information. Biologically, it makes no difference which deer on a property are harvested or when, as long as the harvest quota is not exceeded. The department also responds that the new rule does not in any way affect the property rights of landowners, regardless of participation in the program, as the rule regulates a public resource. No changes were made as a result of the comment.

One commenter stated that the MLD program is a scheme to benefit a few large landowners. The department disagrees with the comment and responds that the program is a flexible management tool available to any landowner regardless of the amount of acreage owned. No changes were made as a result of the comments.

One commenter stated that the MLD program will lead to large-scale high fencing, which will result in captive herds. The department disagrees with the comment and responds that under the Parks and Wildlife Code, §1.013, the code does not prohibit or restrict the owner or occupant of land from constructing or maintaining a fence of any height on the land owned or occupied, and an owner or occupant who constructs such a fence is not liable for the restriction of the movement of wild animals by the fence. The existence of a fence does not affect the status of wild animals as property of the people of this state. No changes were made as a result of the comment.

One commenter stated that the best quality bucks will be killed, leaving inferior bucks to do all the breeding, which will lead to a 'decline in genetics.' The department disagrees with the comment and responds that antler quality is not a qualitative indicator of genetic fitness. No changes were made as a result of the comment.

One commenter stated that because of the breeding habits of mule deer, the extended season would exert excessive pressure on the mule deer herd. The department disagrees with the comment and responds that since the department will establish a maximum harvest for each property, based on a biological determination of sustainability, it does not matter when the animals are harvested. No changes were made as a result of the comment.

One commenter stated that hunting should not be allowed during the rut. The department disagrees with the comment and responds that as part of the program the department will specify the maximum number of deer to be harvested on each MLDP property, based on habitat and population information. Biologically, it makes no difference which deer on a property are harvested, as long as the harvest quota is not exceeded. No changes were made as a result of the comment.

The Desert Mule Deer Association, Presidio County Judge, and Presidio County Clerk opposed adoption of the proposed rule.

The Texas Deer Association and the Texas Wildlife Association supported adoption of the proposed rule.

The department received 2,539 comments supporting adoption of the proposed new rule.

The department received 23 comments opposing adoption of the portion of new §65.42, concerning Deer, that eliminated the one-buck bag aggregate bag limit. The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

One commenter stated that the harvest of deer along county boundaries could double on properties that straddle county lines. The commenter also stated that the proposal conflicts with the department's antler restriction rules because those rules were implemented to control over-harvest. The department disagrees with the comment and responds that a review of harvest and population data indicate little likelihood that harvest will increase enough to cause concern about depletion. The department also responds that the amendment does not conflict with the antler-restriction rules. The antler-restriction rules were implemented to stop over-harvest of buck deer within certain age classes. No changes were made as a result of the comment.

The department received 200 comments supporting adoption of the proposed amendment.

The department received 34 comments opposing adoption of the portion of proposed new §65.42, concerning Deer, that eliminated the two-buck aggregate bag limit. The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

One commenter stated that because of available food, the three-buck limit should be eliminated. The department infers from the comment that the commenter wishes to see a return to a two-buck bag limit. The department disagrees with the comment and responds that because habitat degradation due to overpopulation is a serious concern in many parts of the Edwards Plateau, any reduction in bag limits could possibly result in additional habitat degradation in excess of what is presently occurring. No changes were made as a result of the comment.

One commenter stated that he saw three times more bucks than does in Bell County last year. The department responds that the comment does not warrant a change to the rule, as Bell County is not a two-buck county. No changes were made as a result of the comment.

One commenter stated that two bucks should be enough for any hunter. The department disagrees with the comment and responds that the department's statutory duty is to ensure an ample supply of deer and to equitably distribute opportunity to enjoy the pursuit of the resource. In areas of the state with large surpluses of deer, the department feels that it is appropriate to install larger bag limits. No changes were made as a result of the comment.

One commenter stated that bag limits should not be increased if there is no indication of overpopulation. The department agrees with the comment and responds that populations in most two-buck counties are at or above the carrying capacity of available habitat. Therefore, any additional harvest as a result of the amendment is welcome. No changes were made as a result of the comment.

One commenter stated that taking more than two bucks is overhunting. The department disagrees with the comment and responds that from a biological point of view, bag limits are the result of a calculation of harvestable surplus, or, put another way, the harvest of enough animals to prevent habitat degradation, depletion, or waste. No changes were made as a result of the comment.

One commenter stated that if a person is unable to take a buck in two tries the person should take a doe instead. The department disagrees with the comment and responds that the rule does not regulate attempts; it regulates the number of buck deer that may be taken during a season. No changes were made as a result of the comment.

The department received 170 comments supporting adoption of the proposed amendment.

Six commenters opposed adoption of the portion of proposed new §65.42, concerning Deer, that implemented four 'doe-days' in Bowie, Camp, Delta, Fannin, Franklin, Grayson, Hopkins, Lamar, Morris, Red River, Titus, Upshur, and Wood counties, where harvest currently is by permit only (i.e., there are no 'doe days'). The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

One commenter stated that the implementation of 'doe days' would result in renegade hunters slaughtering the deer population. The department disagrees with the comment and responds that analysis of herd composition data in the affected counties shows a decreasing trend in the number of does per buck; however, the ratio remains unacceptably high, at approximately 4 - 5 does per buck (the target ratio is 1 - 2 does per buck). Hunter numbers in the affected counties have dropped considerably during the same time period, to about three-quarters of the total reported in 1993. These trends indicate that additional harvest is necessary to stabilize herd growth and protect habitat. The additional 'doe days' will allow the remaining hunters to more effectively manage population size and sex ratio. No changes were made as a result of the comment.

One commenter stated that the implementation of antlerless opportunity in such a small number of days would present safety issues. The department disagrees with the comment and responds that the department's statutory authority does not allow the promulgation of regulations on the basis of safety. No changes were made as a result of the comment.

The department received 170 comments supporting adoption of the proposed amendment.

The department received nine comments opposing adoption of the portion of proposed new §65.42, concerning Deer, that increased the number of 'doe days' in Cass, Harrison, Marion, Nacogdoches, Panola, Sabine, San Augustine, and Shelby counties from four to 16. The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

One commenter stated that Landowner Assisted Management Plan (LAMPS) permits and MLD permits were sufficient to control deer numbers. The department disagrees with the comment and responds that data indicate that deer populations in the affected counties remain above desired densities, sex ratios are becoming increasingly skewed, and, due to uncharacteristically wet and warm winters, fawn recruitment has increased significantly, which means that habitat degradation is imminent if deer populations are maintained at current levels. Increasing the opportunity for antlerless harvest will provide ample opportunity to control numbers, especially for small-plot landowners who don't qualify for LAMPS permits. No changes were made as a result of the comments.

One commenter stated that the increase in 'doe days' would have a negative effect on antlerless populations, and that deer populations were decreasing. The department disagrees with the comment and responds that data indicate that deer populations in the affected counties remain above desired densities, sex ratios are becoming increasingly skewed, and, due to uncharacteristically wet and warm winters, fawn recruitment has increased significantly, which means that habitat degradation is imminent if deer populations are maintained at current levels. In addition, harvest has decreased slightly, which is additive to the potential problem. By increasing the antlerless harvest, the department intends to limit additional population growth in order to bring the deer population into equilibrium with habitat and deflect some harvest pressure away from the younger age classes of the buck segment of the population in order to eventually bring sex ratios back to a biologically sound proportion. No changes were made as a result of the comment.

The Sabine County Landowners and Leaseholder Association opposed adoption of the proposed amendment.

The department received 170 comments supporting adoption of the amendment.

The department received eight comments opposing adoption of the portion of proposed new §65.42, concerning Deer, that implemented full-season, either-sex hunting in Armstrong, Borden, Briscoe, Carson, Crosby, Fisher, Floyd, Foard, Hall, Hansford, Hutchinson, Jones, Knox, Ochiltree, Randall, Stonewall, and Swisher counties, where currently there are 16 'doe days.' None of the commenters elaborated a rationale for opposing adoption. The department disagrees with the comments. No changes were made as a result of the comments.

The department received 152 comments supporting adoption of the amendment.

The department received seven comments opposing adoption of the portion of proposed new §65.42, concerning Deer, that implemented full-season, either-sex hunting in Childress, Collingsworth, Cottle, Dickens, Donley, Garza, Gray, Haskell, Hemphill, Kent, King, Lipscomb, Motley, Roberts, Scurry, and Wheeler counties, where currently there are 23 'doe days' in most years. The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

One commenter stated that 23 'doe days' were sufficient. The department disagrees with the comment and responds that in the absence of a compelling argument, based on biological factors, to impose restrictions on the harvest of antlerless deer, the commission's policy is to provide both the greatest hunter opportunity possible and the greatest amount of flexibility to land managers to attain management goals. No changes were made as a result of the comment.

One commenter stated that if deer populations are left alone they level themselves depending on the available food supply. The commenter also stated that full-season, either-sex hunting will unnecessarily endanger the population. The department disagrees with the commenter and responds that the sole reason for 'doe days' is to damp the impact of hunting mortality on reproductive potential in areas where antlerless harvest is excessive. Population data from the majority of counties indicate a moderate to significant upward trend in deer populations over the last 13 years. Harvest data indicate a conservative harvest of antlerless deer in these counties. Given the population growth and moderate hunting pressure, the department anticipates that full-season either-sex hunting will provide additional hunter opportunity and enable more effective management of antlerless deer for habitat conservation while resulting in neither depletion nor waste. No changes were made as a result of the comment.

The department received 152 comments supporting adoption of the amendment.

The department received five comments opposing adoption of the portion of proposed new §65.42, concerning Deer, that increased the number of 'doe days' in Hardeman, Wichita, and Wilbarger counties from 16 to 23-plus days. The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

One commenter stated that if deer populations are left alone they level themselves depending on the available food supply. The commenter also stated that full-season either-sex hunting will unnecessarily endanger the population. The department disagrees with the commenter and responds that the sole reason for 'doe days' is to damp the impact of hunting mortality on reproductive potential in areas where antlerless harvest is excessive. Survey results indicate that deer populations in those counties have increased over the past ten years. These counties had six 'doe days' from 1996 to 1999 and 16 'doe days' from 2000 to the present. Due to the fact that populations are increasing, the department believes that additional antlerless opportunity is required to allow managers to effectively manage antlerless deer populations, which should reduce potential negative habitat impacts. No changes were made as a result of the comment.

The department received 148 comments supporting adoption of the amendment.

The department received eight comments opposing adoption of the portion of new §65.42, concerning Deer, that increased the number of 'doe days' in Denton and Tarrant counties from nine to 16. The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

One commenter stated that due to the tremendous urban development in the affected counties, there is no habitat for deer and therefore no population increase upon which to justify an increase in antlerless harvest. The department disagrees with the commenter and responds that harvest regulations are based on existing habitat and populations rather than ideal or historic habitat and populations. Indeed, development in these counties has caused habitat fragmentation and loss. However, relatively low hunter effort has resulted in the degradation of remaining habitat. By increasing the number of 'doe days,' the department hopes to give land managers additional flexibility to deal with population growth where it is a problem, and to create additional hunter opportunity. No changes were made as a result of the comment.

One commenter stated that because the counties are overpopulated with houses and humans, encroachment should solve the problem. The department disagrees with the comment and responds that the department has an obligation to manage and conserve wildlife wherever it exists. No changes were made as a result of the comment.

The department received 152 comments supporting adoption of the amendment.

The department received five comments opposing adoption of the portion of proposed new §65.42, concerning Deer, that increased the number of 'doe days' in Cooke, Hill, and Johnson counties from nine to 23-plus days. No changes were made as a result of the comments.

The department received 147 comments supporting adoption of the amendment.

The department received eight comments opposing adoption of the portion of proposed new §65.42, concerning Deer, that changed the 'doe day' structure in Brazoria, Fort Bend, Goliad (south of U.S. Highway 59), Jackson (south of U.S. Highway 59), Matagorda, Victoria (south of U.S. Highway 59), and Wharton (south of U.S. Highway 59) counties from a fixed-length of 23 days to a '23-plus day' structure (always including Thanksgiving weekend). The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

One commenter stated that the proposal should be based on science, not consistency of regulations with adjoining counties. The department agrees with the comment and responds that the difference between the 23-day and 23-plus structures is so small as to be biologically insignificant in the affected counties. No changes were made as a result of the comment.

One commenter stated that the best way to increase doe harvest is to implement a late antlerless season. The department disagrees with the comment and responds that the intent of the rule is to standardize regulations in order to reduce regulatory variation where practical, not to increase antlerless harvest. No changes were made as a result of the comment. No changes were made as a result of the comment.

The department received 153 comments supporting adoption of the amendment.

The department received 25 comments opposing adoption of the portion of proposed new §65.42, concerning Deer, that modified regulations governing the take of buck deer in Austin, Colorado, Fayette, Lavaca, Lee, and Washington counties, and expanded the rule to include Bastrop, Brazoria, Caldwell, De Witt, Fort Bend, Goliad, Gonzales, Guadalupe, Jackson, Karnes, Matagorda, Victoria, Waller, Wilson, and Wharton counties. The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

One commenter stated that there are no deer in Jackson County with an inside spread of 13 inches or better. The commenter also stated that the only benefit to the rule change would be to large landowners who will be able to charge excessive fees for hunting on their land. The commenter further stated that the rule would negatively affect the many people who depend on deer meat for food. The department disagrees with the comment and responds that during the first three years the rules were in effect in the six 'experimental' counties, buck harvest decreased only during the first year, rebounding in subsequent years to surpass the pre-rule harvest numbers. The department also notes that the rule affects only buck deer, which means that persons relying on deer as a food source would still have the ability to take antlerless deer for that purpose. The department also responds that it has no statutory authority to regulate with the intent of influencing the price of hunting rights negotiated between landowners and hunters. No changes were made as a result of the comment.

One commenter stated that the production of trophy bucks is not a resource issue and should not be dictated by regulation in deer herds that are thriving. Such a practice should be left to the discretion of the landowner. The commenter also stated that the data provided by the department for the few counties in the Oak Prairie which have had antler restriction regulations imposed on them for the past 3 years conveniently omit any comparison of the total number of buck deer harvested annually by hunters prior to versus after the antler restrictions. The department disagrees with the comment and responds that the rule is not intended to produce trophy bucks, but to reduce hunting pressure on younger bucks. The department also responds that during the first three years the rules were in effect in the six 'experimental' counties, buck harvest decreased only during the first year, rebounding in subsequent years to surpass the pre-rule harvest totals. No changes were made as a result of the comment.

One commenter stated that the department should protect natural resources and not get into the business of culling and developing hunter-oriented breeding programs, the only reason for which is hunting aesthetics. The commenter also stated that the department should not manipulate wild herds to shape the characteristics of deer in the future, which is deer farming and should be prevented. The department disagrees with the comment and responds that the intent of the amendment is to reduce the excessive harvest of young bucks. No changes were made as a result of the comment.

One commenter stated that the rule should be implemented statewide. The department disagrees with the comment and responds it has determined that a gradual implementation accompanied by careful monitoring is the appropriate approach for implementation of this type of rule. The department also responds that the rule may not be appropriate for statewide implementation, because in many counties the age structure of the buck segment of the deer herd is not skewed. No changes were made as a result of the comment.

The department received 257 comments supporting adoption of the amendment.

The department received 10 comments opposing adoption of the proposed amendment to §65.64, concerning Turkey, that alters the bag composition during the fall season for Rio Grande turkey in Archer, Bandera, Bell, Bexar, Blanco, Borden, Bosque, Burnet, Clay, Comal, Comanche, Cooke, Coryell, Denton, Erath, Gillespie, Goliad, Gonzales, Hamilton, Hays, Hill, Hood, Jack, Johnson, Karnes, Kendall, Kerr, Lampasas, Llano, McLennan, Montague, Palo Pinto, Parker, Real, Somervell, Stephens, Travis, Wichita, Williamson, Wilson, Wise, and Young from 'gobblers or bearded hens' to 'either sex.' No changes were made as a result of the comments.

The department received 167 comments supporting adoption of the amendment.

The department received two comments opposing adoption of the proposed amendment to §65.64, concerning Turkey, that creates a standard turkey regulation north of Highway 90 and a standard turkey regulation south of Highway 90 in Kinney, Medina, Uvalde, and Val Verde counties. The commenters did not elaborate a rationale for opposition. The department disagrees with the comments. No changes were made as a result of the comments.

The department received 135 comments supporting adoption of the amendment.

The department received eight comments opposing adoption of the portion of the proposed amendment to §65.64, concerning Turkey, that implemented a spring Rio Grande turkey season to begin the Saturday closest to April 1 and running for 44 consecutive days in Archer, Armstrong, Bandera, Baylor, Bell, Blanco, Borden, Bosque, Brewster, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Ellis, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Lipscomb, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Val Verde, Ward, Wheeler, Wichita, Wilbarger, Williamson, Wise, and Young counties. The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

Two commenters stated that the amendment created a season that is too long. The department disagrees with the comment and responds that because the bag composition is limited to gobblers only, the likelihood of negative impacts on reproductive potential and replacement are negligible, given current rates of harvest. No changes were made as a result of the comments.

One commenter stated that the season should start earlier, because turkeys are usually actively breeding and strutting several weeks before the season opens. The department disagrees with the comment and responds that the opening of the spring season is based upon the results of an extensive breeding chronology indicating that in most years, 90% of the hens have been bred prior to April 1. An earlier opener would create an undesirable effect on replacement. No changes were made as a result of the comment.

The department received 178 comments supporting adoption of the amendment.

The department received seven comments opposing adoption of the proposed amendment to §65.64, concerning Turkey that implemented a spring Rio Grande turkey season beginning the Saturday closest to April 1 and running for 44 consecutive days

in Aransas, Atascosa, Bee, Bexar, Brooks, Calhoun, Dimmit, Duval, Frio, Goliad, Gonzales, Hidalgo, Jim Hogg, Jim Wells, Karnes, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina, Nueces, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, and Zavala counties. The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

One commenter stated that some biologists believe the breeding season may be changing and that the proposal could backfire. The department disagrees with the comment and responds that the proposed season is extremely unlikely to exert a negative effect on turkey populations, as the harvest is limited to male birds and the timing of the season is calculated according to breeding chronologies to ensure that the overwhelming majority of hens have been bred before the season opens. No changes were made as a result of the comment.

The department received 153 comments supporting adoption of the amendment.

The department received 10 comments opposing adoption of the proposed amendment to §65.64, concerning Turkey, that opened a fall season for Rio Grande turkey in Tarrant County. The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

One commenter stated that Tarrant County is too heavily populated for a turkey season. The department disagrees with the comment and responds that human population is not an element in the calculus of implementing hunting seasons for any game bird or game animal. No changes were made as a result of the comment.

The department received 135 comments supporting adoption of the amendment.

The department received seven comments opposing the proposed amendment to open a fall season for Rio Grande turkey in Cameron and Zapata counties. No changes were made as a result of the comment.

The department received 129 comments supporting adoption of the amendment.

The department received seven comments opposing adoption of the proposed amendment to §65.64, concerning Turkey, that modified the spring turkey season in Bastrop, Caldwell, Colorado, DeWitt, Fayette, Guadalupe, Jackson, Lavaca, Lee, Milam, and Victoria counties to run concurrently with Eastern turkey seasons. The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

One commenter stated that the season should begin the Saturday closest to April 1 in order to be consistent with other spring seasons for Rio Grande turkey. The department disagrees with the comment and responds that the intent of the rule is to reduce potential hunter confusion in counties where the bag limit is one bird by making the spring seasons in those counties concurrent with the spring seasons for Easter turkeys. No changes were made as a result of the comment.

The department received 135 comments supporting adoption of the amendment.

The department received 18 comments opposing adoption of the proposed amendment to §65.64, concerning Turkey, that implemented spring youth-only seasons for Rio Grande turkey to take place the weekends immediately preceding and following the open season, during which Rio Grande turkey could be hunted only by persons younger than 16 years of age. The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

One commenter stated that the season does not serve a reason significant enough to justify a special season. The department disagrees with the comment and responds that encouraging and mentoring youth in the enjoyment of hunting is a policy of the commission. No changes were made as a result of the comments.

One commenter stated that adults abuse the youth-only hunting seasons. The department disagrees and responds that while it cannot categorically state that abuses do not occur, it does not seem to be the case, as there have been few complaints filed with the department. No changes were made as a result of the comment.

The department received 154 comments supporting adoption of the amendment.

The department received 12 comments opposing adoption of the portion of the proposed amendment to §65.72, concerning Fish, that changed the harvest regulations for red drum on Lake Nasworthy (Tom Green County) from the current 20-inch minimum length limit and daily bag limit of 3 fish, to no length and no bag limit. No changes were made as a result of the comment.

The department received 118 comments supporting adoption of the amendment.

The department received six comments opposing adoption of the portion of the proposed amendment to §65.72, concerning Fish, that implemented a five-fish daily bag limit (in any combination), with no minimum length limit on the North Concho and South Concho rivers in Tom Green County. The commenters did not elaborate a rationale for opposition. The department disagrees with the comments. No changes were made as a result of the comment.

The department received 104 comments supporting adoption of the amendment.

The department received 16 comments opposing adoption of the portion of the proposed amendment to §65.72, concerning Fish, that eliminated the minimum length limit for spotted bass on Toledo Bend Reservoir (Newton, Panola, Sabine, and Shelby counties). The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

One commentator stated that there was no advantage to facilitating compliance. The department disagrees and responds that it is always better to make enforceable provisions as easy to understand as possible, in order to avoid placing anglers in situations where confusion complicates enjoyment. No changes were made as a result of the comment.

One commenter stated that the rule should not be changed because of golden algae. The department disagrees with the comment and responds that a golden alga is not a problem on Toledo Bend. No changes were made as a result of the comment.

The department received 104 comments supporting adoption of the amendment.

The department received 10 comments opposing adoption of the proposed amendment to §65.82, concerning Other Aquatic Life, which established a closed season from November 1 - April 30 of

the following year for taking live, shell-bearing mollusks (or their shells), starfish, or sea urchins within an area bounded by the bay and pass sides of South Padre Island from the East end of the north jetty at Brazos Santiago Pass to the West end of West Marisol drive in the town of South Padre Island, out 1,000 yards from the mean high-tide line, and bounded to the south by the centerline of the Brazos Santiago Pass. The specific comments of persons who elaborated upon their opposition, accompanied by the department's response, are as follows.

One commenter stated that shelling is a popular pastime among winter Texans. The department agrees with the comment and responds that due to the popularity of shelling, the department is required to maintain protection of the public resource. A study conducted on the harvest of shell-bearing organisms in the lower Laguna Madre identified November - May as a critical period due to the extensive sand/mud flat that is exposed by winter low tides, coupled with easy access by large numbers of fishery participants. This area is biologically diverse due to its proximity to the shallow lower Laguna Madre and the deep water of Brazos Santiago Pass and the Gulf of Mexico. The area is utilized by some species of invertebrates at varying stages of their life histories during movement to or from the Gulf of Mexico. Shell-bearing mollusks in this area produce shells that are utilized by the thinstripe hermit (the species most often taken by fishery participants--79% of individuals harvested during the study period), which are subsequently transported to deeper water for use by deep-water species of hermit crabs such as the flat claw hermit and giant hermit. Some of the most sought-after and easily located shells in this area are the reproducing mollusks, which can be conspicuously exposed during low tide. Harvest of organisms at reproductive aggregations or during reproduction can exacerbate the effects that harvest exerts on a population. The amendment provides needed protection during a critical biological time. No changes were made as a result of the comment.

One commenter stated that the rule should be limited to live organisms. The department disagrees with the comment and responds that for enforcement purposes, the restriction must remain as worded. Were the restriction to apply only to live organisms, law enforcement personnel would have no way of knowing if persons in possession of the organisms had collected them dead or alive. In addition, the rule protects shells for use by other organisms such as hermit crabs and other deep water species during a critical migration period in the area. No changes were made as a result of the comment.

The department received 128 comments supporting adoption of the amendment.

The department received four comments opposing adoption of the proposed amendment to §65.82, concerning Other Aquatic Life, which implemented an aggregate bag limit of 15 living univalve snails (all species), to include no more than two of each of the following species: lightning whelk, horse conch, Florida fighting conch, pear whelk, banded tulip, Florida rocksnail. Research indicates that fishery participants harvest an average of 31 organisms per day, of which 20% (6.2 individuals) are live, shell-bearing mollusks. The bag limit will have a small impact on the harvest of live snails, based on the study. The commenters did not elaborate a rationale for opposition. The department disagrees with the comments. No changes were made as a result of the comments.

The department received 119 comments supporting adoption of the amendment.

The Texas Wildlife Association supported adoption of the proposal.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.1, 65.3, 65.10, 65.19, 65.24 - 65.26, 65.34

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

§65.24. Permits.

(a) Permits shall be issued only to the landowner.

(b) No person may hunt white-tailed deer, mule deer, desert bighorn sheep, or antelope when permits are required unless that person has received from the landowner and has in possession a valid permit issued by the department.

(c) When permits are required to hunt or possess the wildlife resources listed in subsection (b) of this section, it is unlawful to:

(1) use a permit more than once;

(2) use a permit on a tract of land other than the tract for which the permit was issued;

(3) falsify or fail to fully complete any information required by a permit application; or

(4) possess the wildlife resource without attaching a valid, properly executed permit, which shall remain attached until the wildlife resource reaches its final destination.

(d) No state-issued permit is required to hunt antlerless white-tailed deer on a National Wildlife Refuge.

(e) An applicant for a permit issued under §65.26 of this title (relating Managed Lands Deer Permits (MLDP)), §65.27 of this title (relating to Antlerless and Spike Buck Control Permits (control permits)), or §65.34 of this title (relating to Managed Lands Deer Permits (MLDP)--Mule Deer) may request a review of a decision by the department to deny issuance of those permits.

(1) An applicant seeking review of a decision of the department under this subsection shall contact the department within ten working days of being notified by the department of permit denial.

(2) The department shall conduct the review and notify the applicant of the results within ten working days of receiving a request for a review.

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Director of the Wildlife Division;

(B) the Regional Director with jurisdiction;

(C) the Big Game Program Director; and

(D) the White-tailed Deer or Mule Deer program leader, as appropriate.

(4) The decision of the review panel is final.

(5) The department shall report on an annual basis to the White-tailed Deer Advisory Committee the number and disposition of all reviews under this subsection that involve white-tailed deer.

§65.25. Wildlife Management Plan (WMP).

(a) Deer.

(1) An approved WMP, specifying a harvest quota for antlerless deer or both buck and antlerless deer, is required for the issuance of Managed Lands Deer Permits and Antlerless/Spike-Buck Deer Control Permits.

(2) MLD permit issuance shall be determined by the WMP as follows.

(A) Level 1 MLD permits shall be issued to a landowner whose WMP includes current deer population data.

(B) Level 2 MLD permits shall be issued to a landowner whose WMP includes:

(i) deer population data for both the current year and the immediately preceding year;

(ii) deer harvest data from the immediately preceding year; and

(iii) at least two recommended habitat management practices.

(C) Level 3 MLD permits shall be issued to a landowner whose WMP includes:

(i) deer population data for the current year and the immediately preceding two years;

(ii) deer harvest data from the immediately preceding two years; and

(iii) at least four recommended habitat management practices.

(3) A WMP is not valid unless it is:

(A) consistent with Parks and Wildlife Code, §61.053 and §61.056; and

(B) signed by a Wildlife Division biologist or technician. A WMP is valid for one year following the date of such signature.

(b) Lesser Prairie Chicken. No person may hunt a lesser prairie chicken in this state except on a property for which the department has approved a WMP as set forth under this subsection that contains a recommended harvest for lesser prairie chicken.

(1) The WMP required by this subsection shall include:

(A) a lesser prairie chicken population estimate for the current year (April breeding-ground counts);

(B) accurate harvest data from the property for the initial hunting season and each season thereafter that the landowner seeks to hunt lesser prairie chicken on the property;

(C) a biological evaluation of the quality of existing prairie chicken habitat and the potential for enhancing existing habitat or creating additional habitat;

(D) at least five department-recommended habitat management practices designed to increase, enhance, or connect lesser prairie chicken habitat; and

(E) a recommended harvest not to exceed five percent of the estimated lesser prairie chicken population on the property.

(2) The landowner agrees, by signing the WMP, to perform data collection for the purposes of meeting the requirements of paragraph (1) of this subsection.

(3) A WMP under this subsection is not valid unless it has been signed by a department employee authorized to approve management plans. A WMP under this subsection is valid for one year following such signature. The department may refuse to approve a WMP if the landowner has not complied with the provisions of this subsection.

(4) The department may authorize a recommended harvest in the absence of population or harvest data only for the year 2005; thereafter, a property must meet the requirements of paragraph (1) of this subsection.

(5) The bag and possession limits for the harvest of lesser prairie chicken shall be as provided in §65.56 of this title (relating to Lesser Prairie Chicken: Open Seasons, Bag, and Possession Limits).

(6) No person may possess a harvested lesser prairie chicken anywhere other than the property on which the lesser prairie chicken was harvested unless that person also possesses a completed, department-supplied affidavit signed by the landowner of the property where the person harvested the lesser prairie chicken.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 20, 2005.

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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: July 10, 2005
Proposal publication date: February 25, 2005
For further information, please call: (512) 389-4775

DIVISION 2. OPEN SEASONS AND BAG LIMITS--HUNTING PROVISIONS

31 TAC §65.42

The repeal is adopted under Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200502547

Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: July 10, 2005
Proposal publication date: February 25, 2005
For further information, please call: (512) 389-4775

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31 TAC §§65.42, 65.56, 65.64

The amendments and new section are adopted under Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

§65.42. Deer.

(a) No person may exceed the annual bag limit of five white-tailed deer (no more than three bucks) and two mule deer (no more than one buck), except as provided by:

(1) §65.26 of this title (relating to Managed Lands Deer Permits (MLDP)--White-tailed Deer);

(2) §65.34 of this title (relating to Managed Lands Deer Permits (MLDP)--Mule Deer);

(3) §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits);

(4) §65.28 of this title (relating to Landowner Assisted Management Permits (LAMPS));

(5) special permits under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation); or

(6) special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program.

(b) White-tailed deer. The open seasons and annual bag limits for white-tailed deer shall be as follows.

(1) In Aransas, Atascosa, Bee, Brooks, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kinney (south of U.S. Highway 90), Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Willacy, Zapata, and Zavala counties, there is a general open season.

(A) Open season: the first Saturday in November through the third Sunday in January.

(B) Bag limit: five deer, no more than three bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than three of which may be spike bucks.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(2) In Bandera, Bexar, Blanco, Brown, Burnet, Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Edwards, Gillespie, Glasscock, Hays (west of Interstate 35), Howard, Irion, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Llano, Mason, McCulloch, Medina (north of U.S. Highway 90), Menard, Mills, Mitchell, Nolan, Real, Reagan, Runnels, San Saba, Schleicher, Sterling, Sutton, Tom Green, Travis (west of Interstate 35), Uvalde (north of U.S. Highway 90) and Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: five deer, no more than two bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than two of which may be spike bucks.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(3) In Brewster, Culberson, Jeff Davis, Pecos, Presidio, Reeves, Terrell, and Upton (that southeastern portion located both south of U.S. Highway 67 and east of State Highway 349) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks.

(C) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(4) In Angelina, Chambers, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, and Walker counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks and no more than two antlerless.

(C) From opening day through the Sunday immediately following Thanksgiving, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless, LAMPS, or USFS antlerless permits have been issued for the tract of land. On USFS, Corps of Engineers, Sabine River Authority, and Trinity River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits. On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season.

(5) In Austin, Bastrop, Caldwell, Colorado, De Witt, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Jackson (north of U.S. Highway 59), Karnes, Lavaca, Lee, Victoria (north of U.S. Highway 59), Waller, Wilson, Washington and Wharton (north of U.S. Highway 59) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater.

(C) Buck bag limit: two bucks, to include no more than one buck with an inside spread of 13 inches or greater.

(D) Antlerless bag limit: two, by MLDP antlerless permit only.

(6) In Brazoria, Fort Bend, Goliad (south of U.S. Highway 59), Jackson (south if U.S. Highway 59), Matagorda, Victoria (south of U.S. Highway 59), and Wharton (south of U.S. Highway 59) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater.

(C) Buck bag limit: two bucks, to include no more than one buck with an inside spread of 13 inches or greater.

(D) Antlerless bag limit: two.

(E) From opening day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless permits have been issued for the tract of land. If MLDP antlerless permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving, antlerless deer may be taken only by MLDP antlerless permit.

(7) In Archer, Armstrong, Baylor, Bell (west of IH 35), Borden, Bosque, Briscoe, Callahan, Carson, Childress, Clay, Collingsworth, Comanche, Coryell, Cottle, Crosby, Dickens, Donley, Eastland, Erath, Fisher, Floyd, Foard, Garza, Gray, Hall, Hamilton, Hansford, Haskell, Hemphill, Hood, Hutchinson, Jack, Jones, Kent, King, Knox, Lampasas, Lipscomb, McLennan, Montague, Motley, Ochiltree, Palo Pinto, Parker, Randall, Roberts, Scurry, Shackelford, Somervell, Stephens, Stonewall, Swisher, Taylor, Throckmorton, Wheeler, Williamson (west of IH 35), Wise, and Young counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(8) In Cooke, Hardeman, Hill, Johnson, Wichita, and Wilbarger counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) From opening day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless permits have been issued for the tract of land. If MLDP antlerless permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving, antlerless deer may be taken only by MLDP antlerless permit.

(9) In Cass, Denton, Harrison, Marion, Nacogdoches, Panola, Sabine, San Augustine, Shelby, and Tarrant counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) During the first 16 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLDP, LAMPS, or USFS antlerless permits have been issued for the tract of land. On USFS, Corps of Engineers, and Sabine River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 16 days of the general season, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits.

(10) In Bowie, Brazos, Camp, Cherokee, Delta, Fannin, Franklin, Grayson, Gregg, Grimes, Hopkins, Houston, Lamar, Madison, Morris, Red River, Robertson, Rusk, Titus, Upshur, and Wood counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) From Thanksgiving Day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless or LAMPS permits have been issued for the tract of land. On USFS, Corps of Engineers, and Sabine River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the first Saturday in November through the day before Thanksgiving Day, and from the Monday immediately following Thanksgiving Day through the first Sunday in January, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits.

(D) Special regulation. In Grayson County:

(i) lawful means are restricted to lawful archery equipment and crossbows only, including MLDP properties; and

(ii) antlerless deer shall be taken by MLDP only, except on the Hagerman National Wildlife Refuge.

(11) In Anderson, Bell (east of Interstate 35), Burleson, Comal (east of Interstate 35), Crane, Ector, Ellis, Falls, Freestone, Hays (east of Interstate 35), Henderson, Hunt, Kaufman, Leon, Limestone,

Loving, Midland, Milam, Navarro, Rains, Smith, Travis (east of Interstate 35), Upton (that portion located north of U.S. Highway 67; and that area located both south of U.S. Highway 67 and west of state highway 349), Van Zandt, Ward, and Williamson (east of Interstate 35) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: one buck, no more than two antlerless. Antlerless deer may be taken only by MLDP antlerless or LAMPS permits.

(12) In Dallam, Hartley, Moore, Oldham, Potter, and Sherman counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Bag limit: one buck, no more than two antlerless. Antlerless deer may be taken only by MLDP antlerless permit.

(13) In Andrews, Bailey, Castro, Cochran, Collin, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, Hale, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Martin, Parmer, Rockwall, Terry, Winkler, and Yoakum counties, there is no general open season.

(14) Archery-only open seasons. In all counties where there is a general open season for white-tailed deer, there is an archery-only open season during which either sex of white-tailed deer may be taken as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: the Saturday closest to September 30 for 30 consecutive days.

(B) Bag limit: the bag limit in any given county is as provided for that county during the general open season.

(C) No permit is required to hunt antlerless deer unless MLDP permits have been issued for the property.

(15) Muzzleloader-only open seasons, and bag and possession limits shall be as follows.

(A) In Brewster, Culberson, Jeff Davis, Pecos, Presidio, Reeves, Terrell, and Upton (that portion located both south of U.S. Highway 67 and east of state highway 349) counties, there is an open season during which only antlerless and spike-buck deer may be taken only with a muzzleloader.

(i) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two spike bucks.

(B) In Angelina, Chambers, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, and Walker counties, there is an open season during which only antlerless and spike-buck deer may be taken only with a muzzleloader.

(i) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two spike bucks and no more than two antlerless.

(C) No permit is required to hunt antlerless deer unless MLDP permits have been issued for the property.

(16) Special Youth-Only Seasons. There shall be special youth-only general hunting seasons in all counties where there is a general open season for white-tailed deer.

(A) early open season: the Saturday and Sunday immediately before the first Saturday in November.

(B) late open season: the third weekend (Saturday and Sunday) in January.

(C) Bag limits, provisions for the take of antlerless deer, and special requirements in the individual counties listed in paragraphs (1) - (11) of this subsection shall be as specified for the first two days of the general open season in those counties, except as provided in subparagraph (D) of this paragraph.

(D) Provisions for the take of antlerless deer in the individual counties listed in paragraph (10) of this subsection shall be as specified in those counties for the period of time from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(E) Licensed hunters 16 years of age or younger may hunt deer by any lawful means during the seasons established by subparagraphs (A) and (B) of this paragraph, except in Grayson County, where legal means are restricted to crossbow and lawful archery equipment.

(F) A licensed hunter 16 years of age or younger may hunt any deer on any property (including MLDP properties) during the seasons established by subparagraphs (A) and (B) of this paragraph.

(G) The stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I, does not apply during the seasons established by this paragraph.

(c) Mule deer. The open seasons and annual bag limits for mule deer shall be as follows.

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Stonewall, and Swisher counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(2) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, there is a general open season.

(A) Open season: last Saturday in November for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(3) In Andrews (west of U.S. Highway 385), Bailey, Cochran, Hockley, Lamb, Terry, and Yoakum counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for nine consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken by permit only.

(4) In all other counties, there is no general open season for mule deer.

(5) Archery-only open seasons and bag and possession limits shall be as follows. During an archery-only open season, deer may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods). No antlerless permit is required unless MLD antlerless permits have been issued for the property.

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Lipscomb, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Stonewall, Swisher, Upton, Val Verde, Ward, and Winkler counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(ii) Bag limit: one buck deer.

(B) In Brewster, Pecos, and Terrell counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(ii) Bag limit: two deer, no more than one buck.

(C) In all other counties, there is no archery-only open season for mule deer.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 20, 2005.

TRD-200502548
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: July 10, 2005
Proposal publication date: February 25, 2005
For further information, please call: (512) 389-4775

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DIVISION 3. SEASONS AND BAG LIMITS--FISHING PROVISIONS

31 TAC §65.72, §65.82

The amendments are adopted under Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 20, 2005.

TRD-200502549
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: July 10, 2005
Proposal publication date: February 25, 2005
For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 297. COMPLIANCE AND ENFORCEMENT

37 TAC §297.11

The Commission on Jail Standards adopts amendments to §297.11 concerning Compliance and Enforcement that addresses responsibility for payment if the commission is found justified in their actions in regards to the issuance of a remedial order and subsequent appeal requests, without changes to the text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11944).

The adopted rule will specifically address which entity is responsible for payment in contested cases.

No comments were received regarding the proposed amendment.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

The statutes that are affected by this rule are Local Government Code, Chapter 351, §351.002 and §351.015.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2005.

TRD-200502616
Brandon S. Wood
Director of Jail Services
Texas Commission on Jail Standards
Effective date: July 14, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 463-8236

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission will review and consider for re-adoption, revision, or repeal of Chapter 91, §91.401 (Purchase, Lease, or Sale of Fixed Assets), §91.402 (Insurance for Members), §91.403 (Federal Parity Debt Cancellation Products), §91.405 (Records Retention), §91.406 (Credit Union Service Contracts), §91.407 (Electronic Notification), §91.408 (User Fee for Shared Electronic Terminal), §91.409 (Permanent Closing of an Office or Operation), §91.4001 (Authority to Conduct Electronic Operations, §91.4002 (Notice Requirement; Security Review), §91.5001 (Emergency Closing), and §91.5002 (Effect of Closing) of Title 7, Part 6 of the Texas Administrative Code in preparation for the Commission's Rule Review as required by §2001.039, Government Code.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Comments or questions regarding these rules may be submitted in writing to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or electronically to Kerri.Galvin@tcud.state.tx.us. The deadline for comments is August 22, 2005.

The Commission also invites your comments on how to make these rules easier to understand. For example:

Do the rules organize the material to suit your needs? If not, how could the material be better organized?

Do the rules clearly state the requirements? If not, how could the rule be more clearly stated?

Do the rules contain technical language or jargon that isn't clear? If so, what language requires clarification?

Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Commission.

TRD-200502588
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 23, 2005

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Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 7, Chapter 3 (State Bank Regulation), specifically Subchapter A, comprised of §§3.1 - 3.5, regarding Securities Activities and Subsidiaries; Subchapter B, comprised of §§3.21 - 3.22 and §§3.34 - 3.38, regarding General provisions; Subchapter C, comprised of §§3.41 - 3.45, regarding Foreign Bank Agencies; Subchapter E, comprised of §§3.91 - 3.92, regarding Banking House and Other Facilities; and Subchapter F, comprised of §§3.111 - 3.112, regarding Access to Information.

The commission undertakes its review pursuant to Government Code, §2001.039. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist.

Any questions or written comments pertaining to this notice of intention to review should be directed to Sarah Shirley, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or by email to sarah.shirley@banking.state.tx.us. Any changes to rules proposed as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for a 30-day comment period prior to final adoption or repeal by the commission.

TRD-200502669
Everette D. Jobe
Certifying Official
Finance Commission of Texas
Filed: June 29, 2005

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The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 7, Chapter 9 (Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), specifically Subchapter A, comprised of §§9.1 - 9.3, concerning General matters; Subchapter B, comprised of §§9.11 - 9.39, concerning Contested Case Hearings; Subchapter C, comprised of §§9.51 - 9.57, concerning

Appeals to Finance Commission; Subchapter D, comprised of §§9.71 - 9.72, concerning Court Appeals; and Subchapter E, comprised of §§9.81 - 9.84, concerning Rulemaking.

The commission undertakes its review pursuant to Government Code, §2001.039. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist.

Any questions or written comments pertaining to this notice of intention to review should be directed to Robert Giddings, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or by e-mail to rgiddings@banking.state.tx.us. Any changes to rules proposed as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for a 30-day public comment period prior to final adoption or repeal by the commission.

TRD-200502670
Everette D. Jobe
Certifying Official
Finance Committee of Texas
Filed: June 29, 2005

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Prescribed Burning Board

Title 4, Part 13

The Prescribed Burning Board (the Board) files this notice of intention to review and consider for readoption, revision or repeal, Title 4, Texas Administrative Code, Part 13, Chapter 225, concerning General Provisions, Chapter 226, concerning Standards for Certified Prescribed Burn Managers, Chapter 227, concerning Certification, Recertification and Renewal, Chapter 228, concerning Continuing Education for Recertification/Renewal of Certification, and Chapter 229, concerning Educational and Professional Requirements for Lead Instructors, pursuant to the Texas Government Code, §2001.039. Section 2001.039 requires state agencies to review each of their rules every four years and consider the rules under review for readoption, revision or repeal. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of the review process, the Board proposes the amendment of Title 4, Part 13, §225.1, §§226.1 - 226.4, §226.6, §227.5 and §227.12. The proposed amendments may be found in the proposed rule section of this publication of the *Texas Register*. The assessment of Title 4, Part 13, Chapters 225 - 229 by the Board at this time indicates that with the exception of the sections proposed for amendment, the reason for readopting without changes all remaining sections in Chapters 225 - 229 continues to exist.

The Board is accepting comments on the review of Chapters 225 - 229, specifically, as to whether the reason for readopting Chapters 225 - 229 with the proposed amendments continues to exist. Comments or questions on this notice of intention to review may be submitted within 30 days following the date of publication of this notice in the *Texas Register* to Jimmy Bush, Acting Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. In addition, the Board will take comments on the proposal at its next scheduled Board meeting.

TRD-200502638
Dolores Alvarado Hibbs
Deputy General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Filed: June 27, 2005

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Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission files this notice of intent to review Chapter 321, Pari-mutuel Wagering. This review is conducted in accordance with Government Code, §2001.039.

The Commission has conducted a preliminary review of the rules in Chapter 321 and has determined that reasons for adopting the chapter continue to exist. Chapter 321 prescribes all licensing and operational requirements for the conduct of pari-mutuel wagering on horse and greyhound races in Texas, including definitions, a racetrack's parimutuel department operations, wagering information and race results, mutuel tickets and vouchers, totalisator standards, tote facilities and equipment, tote operations, tote reports and logs, wagering on races conducted in Texas, the distribution of pari-mutuel pools, wagering on simulcast races, common pooling, and ticketless electronic wagering.

As part of this review process, the Commission is proposing amendments to §§321.1, 321.3, 321.13, 321.21, 321.33, 321.35, 321.103, 321.105, 321.121, 321.123, 321.139, 321.143, 321.312, 321.313, and 321.315, and new §§321.601, 321.603, 321.605, 321.607, 321.609, 321.621, 321.623, 321.625, and 321.627. The proposed amendments and new sections are published elsewhere in this issue of the *Texas Register*.

The Commission is proposing the readoption of the following sections without amendment: §§321.5, 321.7, 321.9, 321.11, 321.15, 321.17, 321.19, 321.23, 321.25, 321.27, 321.29, 321.31, 321.34, 321.37, 321.39, 321.41, 321.43, 321.45, 321.101, 321.107, 321.124, 321.125, 321.127, 321.131, 321.133, 321.135, 321.137, 321.141, 321.201, 321.203, 321.205, 321.207, 321.209, 321.211, 321.213, 321.215, 321.217, 321.301 - 321.311, 321.314, 321.316 - 321.318, 321.401, 321.403, 321.405, 321.407, 321.409, 321.411, 321.413, 321.415, 321.417, 321.419, 321.421, 321.451, 321.453, 321.455, 321.457, 321.459, 321.461, 321.501, 321.503, 321.505, 321.507, and 321.509.

The Commission will accept comments on the requirement as to whether the reasons for adopting these sections continue to exist as well as comments on the proposed amendments and new sections published elsewhere in this issue of the *Texas Register*.

All comments or questions regarding this notice of intent to review should be directed to Paula C. Flowerday, Executive Secretary, Texas Racing Commission, by mail to P.O. 12080, Austin, Texas 78711-2080, by fax to 512-833-6907, or by e-mail to paula.flowerday@txrc.state.tx.us.

TRD-200502601
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Filed: June 23, 2005

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §599.4(b)(8)

PROPER PRE-CONSTRUCTION SUBTERRANEAN TERMITE TREATMENTS
A Guide for Builders and Consumers

Texas Structural Pest Control Board
PO Box 1927
Austin, Texas 78767-1927
Telephone No. (512) 305-8250

I. Definitions

The Texas Structural Pest Control Board licenses pest control operators and regulates the application of pesticides for the prevention or control of subterranean termites. Because of the importance of treatments made to buildings under construction (commonly called pre-treats), this publication has been prepared for builders and consumers which hire pest control operators for these preventative termite treatments. Pre-construction treatments may include soil treatments, bating systems, treatments of wooden structural elements, physical barriers, methods and other devices.

A pre-construction treatment may be a full treatment or a partial treatment, defined in the following manner.

A. FULL TREATMENT

Effective preconstruction treatment for subterranean termite prevention requires the establishment of complete vertical and horizontal approved physical or chemical barriers between wood in the structure and the termite colonies in the soil.

For Horizontal Chemical Barriers, applications shall be made using a low pressure spray after grading is completed and prior to the pouring of the slab or footing to provide thorough and continuous coverage of the area being treated.

For Vertical Chemical Barriers, establish vertical barriers in areas such as around the base of foundations, plumbing lines, backfilled soil against foundation walls and other areas which may warrant more than just a horizontal barrier.

B. PARTIAL TREATMENT

A partial treatment is anything less than a full treatment as described above. A partial treatment only protects the areas treated from wood destroying insects. The areas chemically treated must be treated using at least the minimum labeled rate.

A pre-construction treatment of parts of the framing or physical barriers and devices installed at slab penetrations are considered partial treatments. Baits shall be disclosed as bait treatments.

II. APPLICATION RATES

Labels can and do differ. Read and follow label directions. Builders and consumers should ask for a copy of the label.

1) Unless otherwise directed by the label, fill material to be covered by a slab is treated at a rate of 1 gallon per 10 square feet (soil fill). For coarse fill, use 1.5 gallons per 10 square feet or as specified on the product label.

2) Unless otherwise directed by the label, soil backfill areas next to walls, piers, pipes and under "critical areas" like slab expansion joints are treated with 4 gallons per 10 linear feet per foot of depth. (This includes fill areas inside chimneys and earth-filled porches). 3) Hollow masonry units receive 2 gallons per 10 linear feet. Though a concrete block wall may have multiple chambers (2 or 3 hole blocks), it is counted as one hollow void when calculating the amount of termiticide needed for treatment. Review specific label requirements for proper mixture rates and application procedures.

III. CONTACTING THE STRUCTURAL PEST CONTROL BOARD

The Texas Structural Pest Control Board does not regulate pricing of treatments. However, we are interested in situations where the price is only a fraction of the cost of materials needed to do the job correctly. Remember, comparing the bid price to the size of the structure and the cost of termiticide does not include costs such as insurance, travel, labor and other costs associated with overhead. **FURTHER, A CONTRACTOR MAY HAVE CIVIL OR CRIMINAL LIABILITY IF THEY CONSPIRE TO VIOLATE STRUCTURAL PEST CONTROL BOARD REGULATIONS.**

Termiticide labels have specific directions about the product's use. Pest Control Companies must follow these directions and Texas Structural Pest Control Board regulations including 599.3 (a) and (b):

(a) All pesticide applications must be made by using the application rate and methods and by following the precautionary statements on the labeling of the pesticide being used.
Treatments using less than label recommended concentrations at higher volume applications are prohibited for preconstruction treatments,
(b) for a full treatment the entire structure shall be treated to provide a continuous horizontal and vertical barrier as described on the pesticide label including the posting of a treatment sticker and the final treatment to be performed within 30 days of notification of completion of landscaping or one year from the date of completion of construction, whichever comes first. Except, when construction has proceeded to the point that all areas cannot be treated before the company providing the treatment is called to perform the job, a partial treatment will be permitted if the owner of the structure or the person in charge of the construction and the certified applicator for the pest control company sign a statement attesting to the conditions, and attach it to the contract with an amended graph showing the exact areas treated.

Termiticides must be used at the prescribed rate, to protect the structure from termites and to comply with federal and state regulations.

The Texas Structural Pest Control Board will inspect specific treatments in response to consumer complaints or information that indicates a possible improper treatment. **THE PEST CONTROL COMPANY IS REQUIRED TO INFORM THE TEXAS STRUCTURAL PEST CONTROL BOARD 4-24 HOURS PRIOR TO PERFORMING THE TREATMENT.** The prior treatment notification requirement is specific to commercial preconstruction and is not required for single family dwellings. The Board will also inspect treatments during compliance inspections of pest control company operations and will randomly make inspections of job sites where treatments are in progress. Such on-site inspections typically involve collecting samples of the tank mix and soil samples of treatment sites following application. Questions about termite treatment procedures should be directed to the Texas Structural Pest Control Board office.

IV. TREATMENT REQUIREMENTS
For existing or post construction treatments, a variety of treatments may be used that include chemical, approved Texas Structural Pest Control Board physical barriers, methods and devices, and baiting systems. This information, furnished to the Texas Structural Pest Control Board, will allow us to inspect treatments in progress to ensure that proper procedures are being used. Keep in mind that an inspection by the Texas Structural Pest Control Board is not required for the treatment or construction to proceed. Inspections at pretreatment sites, both residential and commercial, will be made on a case-by-case basis.

It is the philosophy of this agency to combine firm but fair enforcement actions with an educational approach to obtain regulatory compliance.

TREATMENT IS:

A.	**Full**	[]
B.	**Partial**	[]
C.	**Bait**	[]
D.	**Commercial**	[]
E.	**Single Family**	[]

I have received a copy of the Guide for Builders and Commercial Customers.

Signature of Customer or Contractor

Date
SPCB/D-3

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Public Hearing

MULTIFAMILY HOUSING REVENUE BONDS (NORTH SIDE MANOR APARTMENTS) SERIES 2005

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on July 29, 2005 at 6:00 p.m., in the cafeteria at the Oveal Williams Senior Center, 1414 Martin Luther King Drive, Corpus Christi, Texas 78401, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $15,000,000, the proceeds of which will be loaned to Housing and Community Services Inc., a non-profit housing corporation, to finance the rehabilitation and renovation of an existing 120-unit multifamily housing property (the "Property") located in the city of Corpus Christi, Texas. The public hearing, which is the subject of this notice, will concern the North Side Manor Apartments with 100 units located at 1401 North Alameda, Corpus Christi, Texas 78401 and 20 units located at 1735 Lake Street, Corpus Christi, Texas 78401. The Property will be owned by HCS 311, LLC, a subsidiary of Housing and Community Services, Inc.

All interested parties are invited to attend such public hearing to express their views with respect to the Property and the issuance of the Bonds. Questions or requests for additional information may be directed to Katherine Closmann at the Texas State Affordable Housing Corporation, 1005 Congress Avenue, Suite 500, Austin, Texas 78701; 1-888-638-3555 ext. 424.

Persons who intend to appear at the hearing and express their views are invited to contact Katherine Closmann in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Katherine Closmann prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Laura Smith, ADA Responsible Employee, at 1-888-638-3555, ext.400 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require child care to be provided at this meeting should contact Laura Smith at 1-888-638-3555, ext. 400, at least five days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to Katherine Closmann at kclosmann@tsahc.org.

TRD-200502677
David Long
President
Texas State Affordable Housing Corporation
Filed: June 29, 2005

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Office of the Attorney General

Texas Clean Air Act and Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act and Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *Harris County, Texas and The State of Texas v. Giles Construction Co., Inc.*, Cause No. 2004-23333, in the 157th Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Defendant was engaged in the business of land clearing throughout Harris County. Defendant was cited for violations due to improper use of a trench burner on three separate occasions.

Proposed Agreed Judgment: The Agreed Final Judgment and Injunction permanently enjoins Defendant to comply with all of the provisions of the environmental rules and regulations of the Texas Commission on Environmental Quality. Defendant has agreed to pay Plaintiffs $19,500.00, consisting of $17,500.00 in civil penalties to be divided equally between Harris County and the State of Texas, and $2,000.00 in attorney's fees to be divided equally between Harris County and the State of Texas, plus all court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Lisa Sanders Richardson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200502659
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: June 28, 2005

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Texas Building and Procurement Commission

List and Summary of Other States' Laws that Regulate Award of Governmental Contracts to Out of State Bidders

Pursuant to Texas Government Code, Title 10, §2252.003, the Texas Building and Procurement Commission publishes this list of states having laws and rules that regulate the award of governmental contracts to bidders whose primary place of business is not in that state. The list includes the citation to and a summary of the laws and rules pertaining

to the evaluation of bids and the award of contracts to nonresident bidders.

Reciprocal Preference--The Texas Building and Procurement Commission may award a contract to a nonresident bidder only if its bid is lower than the lowest bid submitted by a responsible Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state where the nonresident's principal place of business is located. (Texas Government Code, Title 10, §2252.002.)

In evaluating the bid of a nonresident bidder, an amount will be added equal to the amount a Texas resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state where the nonresident bidder's principal place of business is located. After the amount is added, an award may be made to the nonresident bidder if it is determined to have the lowest price and best bid. The amount added is for evaluation purposes only; in no event shall an amount be awarded in excess of the amount actually bid. (Texas Administrative Code, Title 1, §113.8)

ALABAMA:

Code of Alabama, Title 14, §14-7-13--All state offices, departments, institutions and agencies supported by the state shall purchase from the Alabama Board of Corrections. Exceptions provided under §14-7-14 for articles or products produced or manufactured by the Alabama Institute for the Deaf and Blind.

Code of Alabama, Title 14, §14-7-14--Exceptions for §14-7-13 may be made in the case of articles or products produced or manufactured by the Alabama Institute for the Deaf and Blind.

Code of Alabama, Title 21, §21-2-2--Preference for products made or manufactured by the blind, visually handicapped, deaf or severely handicapped through the Alabama Institute for the Deaf and Blind. Preference is not applied over articles produced or manufactured by convicts in Alabama employed in industries operated or supervised by the board of corrections.

Code of Alabama, Title 23, §23-1-51--All motor fuels, oils, greases and lubricants bought by or for the State Department of Transportation for use in the construction, maintenance and repair of the county roads and bridges shall be purchased from vendors and suppliers residing in the county where such motor fuels, oils, greases and lubricants are to be used.

Code of Alabama, Title 39, §39-3-5--Preference to resident contractors in tie bids for public contracts in which any state county or municipal funds are utilized, except those contracts funded in whole or in part with funds received from a federal agency. Reciprocal preference is applied to nonresident contractors in the letting of public contracts. A nonresident contractor is defined in §39-2-12 as a contractor who is neither organized nor existing under the laws of the State of Alabama, nor maintains its principal place of business in the State of Alabama.

Code of Alabama, Title 41, §41-16-20--With the exception of public works contracts a preference is applied in all contracts involving $7,500 or more to a person, firm or corporation who (1) produces or manufactures the product within the State of Alabama; (2) has an assembly plant or distribution facility for the product within the State of Alabama; and (3) is organized for business under the applicable laws of the State of Alabama as a corporation, partnership, or professional association and has maintained at least one retail outlet or service center for the product or service within the State of Alabama for not less than one year prior to the deadline date of the competitive bid as long as the bid of the preferred bidder is no more than 5 % greater than the bid of the lowest responsible bidder.

Code of Alabama, Title 41, §41-16-27--Contractual services and purchases of personal property regarding the athletic department, food services and transit services negotiated on behalf of two-year and four-year colleges and universities may be awarded without competitive bid and preference given to an Alabama business entity (a sole proprietorship, partnership or corporation organized in the State of Alabama). Preference to an Alabama business entity does not apply if the product or service is supplied by a foreign corporation and is substantially different or superior to the product or service supplied by the Alabama business entity.

Code of Alabama, Title 41, §41-16-57--Preference in tie bids for commodities produced in Alabama or sold by Alabama persons, firms, or corporations in the purchase of or contract for personal property or contractual services.

ALASKA:

Alaska Statutes, §35.27.020--Art Requirements For Public Buildings and Facilities

(g) When purchasing art for public buildings, a preference is given the use of state culture and the selection of Alaska resident artists.

Alaska Statutes, §36.15.010--In projects to be financed by state money, whenever practical, a preference is given to timber, lumber and manufactured lumber products originating in Alaska from local forests.

Alaska Statutes, §36.15.050--Contracts and calls for bids shall denote a preference for agricultural products harvested in the state of Alaska and for fisheries products harvested or processed within the jurisdiction of the State of Alaska when purchased by the state or by a school district that receives state money as long as it is no more than 7% higher than non-Alaskan products.

Alaska Statutes, §36.30.170

Part (a)--Contract award after bids--Generally, contracts are awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the invitation to bid, except as provided by the following.

Part (b)--Alaska Products--Applies an Alaska bidder preference of 5%, an Alaska products preference as described in §§36.30.322 through 36.30.328, and a recycled products preference under §36.30.337 over the lowest responsive and responsible bidder.

"Alaska bidder" is defined as a person who (1) holds a current Alaska business license; (2) submits a bid for goods, services or construction under the name in the Alaska business license; (3) maintains a place of business within the state; (4) is incorporated or qualified to do business under the laws of the State of Alaska, is a sole proprietorship and the proprietor is a resident of the State of Alaska, is a limited liability company organized under Alaska Statutes §10.50 and all members are residents of the State of Alaska, or is a partnership under Alaska Statutes §32.05 and §32.11 and all partners are residents of Alaska; and (5) if it is a joint venture, that it is composed entirely of ventures that meet the preceding qualifications.

Part (c)--Employment Program--Award to an Alaska bidder who is not more than 15% higher than the lowest bid when Alaska bidder offers services through an employment program. "Program" means the state training and employment program established in Alaska Statutes, §§23.15.620 through 23.15.660.

Part (d)--Insurance Related--An Alaska bidder preference of 5% over the lowest bid for insurance related contracts.

Part (e)--Qualified Entity--An Alaska bidder preference of 10% over the lowest bid applied to a bidder who qualifies under §36.170(b) and

is a qualifying entity. Qualifying entity is defined as (1) a sole proprietorship owned by a person with a disability; (2) a partnership if each of the partners is a person with a disability; or (3) a limited liability company if each of the members is a person with a disability.

Part (f)--Employees with Disability--An Alaska bidder preference of 10% over the lowest bid if at least 50 % of bidder's employees at time of the bid are persons with a disability.

Alaska Statutes, §36.30.322--Preference for timber, lumber and manufactured lumber products originating in the state of Alaska forests to be procured by an agency or used in construction projects of an agency unless the Alaska producer or supplier has been given reasonable notice and is unable to supply the products at a cost within 7% of the price offered by a manufacturer or supplier of non-Alaska forest products.

Alaska Statutes, §36.30.324--Preference for use of Alaska products and recycled Alaska products in procurements for an agency.

Alaska Statutes, §36.30.330--If a successful bidder or offeror who designates the use of an Alaska product in a bid or proposal for a procurement for an agency fails to use the designated product for a reason within the control of the successful bidder or offeror, each payment under the contract shall be reduced 4% for Class I designated Alaska product, 6% for Class II, and 8% for Class III. A person is not a responsible bidder or offeror if, in the preceding three years, the person has twice designated the use of an Alaska product in a bid or proposal and has each time failed to use the designated Alaska product for reasons within the control of the bidder or offeror.

Alaska Statutes, §36.30.332--Preference for the following Alaska products: Preference of 3% for Class I products that are more than 25% and less than 50 % produced or manufactured in the State of Alaska. Preference of 5% for Class II products that are 50 % or more and less than 75 % produced or manufactured in the State of Alaska. Preference of 7% for Class III products that are 75 % produced or manufactured in the State of Alaska.

Alaska Statutes, §36.30.338--Definitions: "Alaska product" means a product of which not less than 25 % of the value has been added by manufacturing or production in the State of Alaska.

"Produced or manufactured" means processing, developing, or making an item into a new item with a district character and use through the application within the state of materials, labor, skill or other services.

"Product" means materials or supplies but does not include gravel and asphalt.

"Recycled Alaska product" means an Alaskan product of which not less than 50 % of the value of the product consists of a product that was previously used in another product, if the recycling process is done in the State of Alaska.

Title 2, Alaska Administrative Code, §12.260

Part (d): Alaska Bidder--The price of an offeror who qualifies as an Alaska bidder under AS 36.30.170 (b) shall be reduced by 5% and all other applicable preferences must be applied.

Part (e)--Numerical Rating System. If a numerical rating system is used in evaluating competitive sealed proposals, an Alaska offeror preference of at least 10% of the total possible value of the rating system is assigned to a proposal from an Alaska bidder.

Title 2, Alaska Administrative Code, §12.890--If both the Alaska bidder's preference under AS 36.30.170(b) and the Alaska products preference under AS 36.30.322--36.30.328 apply to a solicitation, a procurement officer shall apply the bidder's preference first and the products preference second.

American Samoa Statutes, §12.0210--Preference to local bidders in procurement contracts. Construction bids from off-island bidders may not be accepted where the contract value is estimated at 1.5 million dollars or less. Responsible local bidders must be given a 10% preference for works valued over 1.5 million dollars. For goods or services preference to local bidders shall be given as follows:

3-0 up to $10,000 -- 25%

More than $10,000 up to $50,000 -- 12%

More than $50,000 up to $100,000 -- 10%

More than $100,000 up to $200,000 -- 5%

More than $200,000 -- -0-

This section shall not apply to any procurement which is funded wholly or partially with federal funds.

ARIZONA:

Arizona Revised Statutes Annotated, Title 34, §34-242--Preference for bidders who furnish materials produced or manufactured in the State of Arizona to construct a building or structure, or additions to or alterations of existing buildings or structures to any political subdivision of the State of Arizona as long as a competing bidder is less than 5% lower. Bidders cannot claim a preference pursuant to both §34-242 and §34-243 and may not receive more than 5 % total preference.

Arizona Revised Statutes Annotated, Title 34, §34-243--Preference to bidders who furnish materials supplied by a dealer who is a resident of the State of Arizona to construct a building or structure, or additions to or alterations of existing buildings or structures for any political subdivision of Arizona whenever the bid of a competing bidder is less than 5% lower than that of the resident dealer.

Arizona Revised Statutes Annotated, Title 41, §41-2636--Preference for state governmental units to purchase office products, vinyl binders and furniture from Arizona industries for the blind, certified nonprofit agencies for disabled individuals and Arizona correctional industries if (1) such materials and services are readily available; (2) such materials and services are capable of timely delivery; and (3) such materials and services are of equal quality and price for these same materials and services in the private sector.

ARKANSAS:

Arkansas Code Annotated, AR ST §12-30-304--Preference for state institutions to purchase products grown or produced by the Arkansas State penitentiary and other farms.

Arkansas Code Annotated, AR ST §13-8-206(c)(2)--Preference for works of art by Arkansas artists when purchasing or commissioning art work for a state agency building to be constructed or renovated.

Arkansas Code Annotated, AR ST §19-11-259(b)--Preference to a firm resident in Arkansas in the purchase of commodities that are materials and equipment used in public works projects if the bid does not exceed the lowest qualified bid from a nonresident firm by more than 5% and if one (1) or more firms resident in Arkansas made written claim for a preference at the time the bids were submitted.

Arkansas Code Annotated, AR ST §19-11-260--Preference of 10% for recycled paper products. An additional 1% preference is allowed for products containing the largest amount of post consumer materials recovered within the State of Arkansas. A bidder receiving a preference under this section shall not be entitled to an additional preference under §19-11-259.

Arkansas Code Annotated, AR ST §19-11-304--Priority for bids submitted by private industries located within the State of Arkansas and

employing Arkansas taxpayers over bids submitted by out-of-state penal institutions employing convict labor.

Arkansas Code Annotated, AR ST §19-11-305 and AR ST §19-11-306--Preference of 5% to Arkansas bidders (as provided for in §19-11-259) in the purchase of commodities that are materials and equipment used in public works projects against bids received from private industries located outside the State of Arkansas; and a preference of 15% to Arkansas bidder against bids by an out-of-state correctional institution.

Arkansas Code Annotated, AR ST §19-11-901--Preference is given to "suitable products", produced and offered by facilities certified by the Arkansas Rehabilitation Services, where manufacture or handiwork is carried out for the primary purpose of providing evaluation, training, and gainful employment to disabled individuals of Arkansas.

CALIFORNIA:

California Government Code, Title 1, Division 5, Chapter 4, §4331--Tie breaking Preference for supplies grown manufactured, or produced in the State of California, and next preference for supplies partially manufactured, grown or produced in the State of California. **NOTE: Although §4331 has not been repealed, it was found to be unconstitutional by the California Attorney General. (See 53 Ops. Cal. Atty. Gen. 72, 73 (1970))**. Preference for California-made supplies by this section not applicable to materials going into construction of state-owned buildings; and not applying to general contractors purchasing materials necessary to perform their contracts with the State of California. **(See 27 Ops. Cal. Atty. Gen. 52 (1956)). California's Department of General Services, Procurement Division, does not apply this preference**.

California Government Code, Title 1, Division 5, Chapter 4, §4334--Preference of 5% to bidders manufacturing supplies in the State of California to be used or purchased in the letting of contracts for public works, with the construction of public bridges, buildings and other structures, or with the purchase of supplies for any public use. **NOTE: Although §4334 has not been repealed, it was found to be unconstitutional by the California Attorney General. See 53 Ops. Cal. Atty. Gen. 72, 73 (1970).**

California Government Code, Title 1, Division 5, Chapter 10.5, §4531--Preference for California based companies submitting bids or proposals for state contracts to be performed at worksites in distressed areas by persons with a high risk of unemployment when the contract is for goods or services in excess of $100,000.00. (Target Area Contract Preference Act).

California Government Code, Title 1, Division 5, Chapter 10.5, §4533--Contracts for goods in distressed areas. Preference of 5% in contracts for goods in excess of $100,000 given to California based companies that have at least 50 % of the labor hours required to manufacture the goods and perform the contract performed at a worksite or worksites located in a distressed area.

California Government Code, Title 1, Division 5, Chapter 10.5, §4533.1--Additional preference awarded to bidders for contracts of goods in excess of $100,000 and who comply with §4533 are as follows:

1% preference for bidders who agree to hire persons with high risk of unemployment equal to 5 to 9 % of its work force during the period of contract performance;

2% preference for bidders who agree to hire persons with high risk of unemployment equal to 10 to 14 % of its work force during the period of contract performance;

3% preference for bidders who agree to hire persons with high risk of unemployment equal to 15 to 19 % of its workforce during the period of contract performance; and

4% preference for bidders who agree to hire persons with high risk of unemployment equal to 20 % or more of its workforce during the period of contract performance.

California Government Code, Title 1, Division 5, Chapter 10.5, §4534--Preference of 5% in contracts for services in excess of $100,000 given to California based companies that have no less than 90 % of the labor required for the contract performed at a worksite or worksites located in a distressed area.

California Government Code, Title 1, Division 5, Chapter 10.5, §4534.1--Additional preferences as set forth in §4533.1 are awarded to bidders for contracts of services in excess of $100,000 who comply with provisions as set forth in §4534.

California Government Code, Title 1, Division 5, Chapter 10.5, §4535.2--The maximum preference and incentive a bidder may be awarded under Chapter 10.5, the Target Area Contract Preference Act, is 15% and is not to exceed a cost preference of $50,000. The combined cost of preferences and incentives granted pursuant to Chapter 10.5 and any other provision of law is not to exceed $100,000. Small business bidders qualified in accordance with §14838 shall have precedence over non-small business bidders.

California Government Code, Title 1, Division 7, Chapter 12.8, §7084--Preference of 5% when a the state prepares a solicitation for a contract for goods in excess of $100,000 to California based companies who certify that not less than 50 % of the labor hours required to perform the contract shall be accomplished at a worksite or worksites located in an enterprise zone.

Preference of 5% in evaluating proposals for contracts for services in excess of $100,000 to California based companies who certify that not less than 90 % of the labor hours required to perform the contract shall be accomplished at a worksite or worksites located in an enterprise zone.

1% preference given to bidders who agree to hire persons living within a targeted employment area or enterprise zone equal to 5 to 9 % of its workforce.

2% preference given to bidders who agree to hire persons living within a targeted employment area or enterprise zone equal to 10 to 14 % of its work force.

3% preference given to bidders who agree to hire persons living within a targeted employment area or enterprise zone equal to 15 to 19 % of its workforce.

4% preference given to bidders who agree to hire persons living within a targeted employment area or enterprise zone equal to 20% or more of its workforce during the period of the contract performance.

The maximum preference awarded to a bidder under the California Government Code, Chapter 12.8, Enterprise Zone Act, is 15%, and the maximum preference cost cannot exceed $50,000.00.

California Government Code, Division 7, Title 1, Chapter 12.97, §7118--A preference of 5% is awarded to California-based companies in contracts for goods in excess of $100,000 if no less than 50 % of the labor required to perform the contract is accomplished at a worksite or worksites located in a local agency military base recovery area (LAMBRA).

A preference of 5% is awarded to California-based companies in contracts for services in excess of $100,000 if no less than 90 % of the labor required to perform the contract is accomplished at a worksite or

worksites located in a local agency military base recovery area (LAMBRA).

A 1% preference for bidders who agree to hire persons living within a LAMBRA that is equal to 5 to 9 % of its work force during the period of contract performance.

A 2% preference for bidders who agree to hire persons living within a LAMBRA that is equal to 10 to 14 % of its work force during the period of contract performance.

A 3% preference for bidders who agree to hire persons living within a LAMBRA that is equal to 15 to 19 % of its work force during the contract performance.

A 4% preference for bidders who hire persons living within a LAMBRA that is equal to 20 % or more of its work force during the contract performance.

The maximum preference a bidder may be awarded under Chapter 12.97, Local Agency Military Base Recovery Area Act, is 15% and the maximum preference cost cannot exceed $50,000.00.

A small business bidder, who is the lowest responsible bidder or is eligible for a 5% small bidder's preference, notwithstanding any other provision of this section, shall be given precedence over businesses too large to be categorized as a small business.

California Government Code Annotated, Title 2, Division 3, Part 5.5, Chapter 6.5, §14837--Definitions.

"Small business" means an independently owned and operated business, which is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of $10,000,000.00 or less over the previous 3 years, or is a manufacturer with 100 or fewer employees.

"Manufacturer" means a business that is (1) primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products; and (2) classified between codes 2000 and 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

California Government Code Annotated, Title 2, Division 3, Part 5.5, Chapter 6.5, §14838--A 5% preference to small business over the lowest responsible bidder meeting specifications in state procurement, construction contracts, and in service contracts. The maximum small business preference shall not exceed $50,000 for any bid and the combined cost for preferences granted by law shall not exceed $100,000.

In the event of a precise tie between the low responsible bid from a small business and the low responsible bid from a disabled veteran-owned small business, the disabled veteran-owned small business will be awarded the contract.

California Government Code Annotated, Title 2, Division 3, Part 10B, Chapter 2.1, §15813.1--Definitions.

"Work of art" means any work of visual art, including but not limited to, a drawing, painting, mural, fresco, sculpture, mosaic, or photograph, a work of calligraphy, a work of graphic art (including an etching, lithograph, offset print, silk screen, or a work of graphic art of like nature), crafts (including crafts in clay, textile, fiber, wood, metal, plastic, glass, and like materials), or mixed media including a collage, assemblage, or any combination of the foregoing art media). The term "work of art" does not include environmental landscaping placed about a state building.

California Government Code Annotated, Title 2, Division 3, Part 10B Chapter 2.1, §15813.3--Preference may be given to artists who are California residents when purchasing, leasing, or commissioning works of art for public buildings.

California Public Contract Code, Division 2, Part 1, Chapter 6, §6107--When awarding contracts for construction, a state agency shall grant a California company a reciprocal preference against a nonresident contractor equal to the amount of the preference applied by the state of the nonresident contractor. If the California company is eligible for a California small business preference described in §14838, the preference applied is the greater of the two, but not both.

California Public Contract Code, Division 2, Part 2, Chapter 3, §12102--A preference of 5% for small business (provided for in Government Code Annotated, Title 2, Division 3, Chapter 6.5, §14838) is applied for the acquisition of electronic data processing and telecommunications goods and services.

California Code of Regulations, Title 2, Administration, Division 2, Financial Operations, Subchapter 9, §1896.31. In contract for goods having estimated cost in excess of $100,000, except a contract where the worksite will be fixed by the terms of the contract a 5 percent preference given to California based companies who certify that no less than 50 percent of the labor required to perform the contract shall be accomplished at a worksite or worksites located in a distressed area.

COLORADO:

Colorado Revised Statutes Annotated, §8-18-101--In a contract for commodities, services or construction contracts other than for a bridge, highway or a public-private initiatives, a resident bidder is given preference over nonresident bidders equal to the preference required by the state in which the nonresident bidder is a resident. There is tie breaking preference in favor of a resident bidder in a low bid tie.

Colorado Revised Statutes Annotated, §8-19-101--Bid preference--public projects. Statute text When a construction contract for a public project is to be awarded to a bidder, a resident bidder shall be allowed a preference against a nonresident bidder from a state or foreign country equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident unless it is determined that compliance with this section may cause denial of federal moneys.

"Public project" means any publicly funded contract entered into by a governmental body of the executive branch of the State of Colorado that is subject to the Procurement Code, articles 101 to 112 of Title 24, Colorado Revised Statutes.

Colorado Revised Statutes Annotated, §8-19-102 (2)--Resident Bidder Defined. A person, partnership, corporation, or joint venture authorized to transact business in Colorado and which maintains its principal place of business in Colorado; or a person, partnership, corporation, or joint venture authorized to transact business in Colorado that maintains a place of business in Colorado and has paid Colorado unemployment compensation taxes in at least seventy-five percent of the eight quarters immediately prior to bidding on a construction contract for a public project.

Colorado Revised Statutes Annotated, §8-19-102.5--Resident bidder--Reciprocity. In addition to any other criteria for awarding a preference under this article, the residence, registration, unemployment compensation, and other preference conditions applied to a Colorado resident bidder doing business in another state or foreign country shall be applied to a resident bidder from that state or foreign country doing business in Colorado in determining whether a preference shall be allowed.

Colorado Revised Statutes Annotated, §8-18-103--Preference for State Agricultural Products. Governmental bodies shall five preference to agricultural products produced in Colorado by a resident bidder when the product is suitable and available in sufficient quantity.

Colorado Revised Statutes Annotated, §17-24-111--Preference applied in the competitive sealed bidding for the purchase of goods and services from Colorado's Division of Correctional Industries. State agencies shall purchase office furniture and office systems from the Correctional Division. Printing is to be purchased from the Division of Correctional Industries unless a state agency operates its own printing operation.

Colorado Revised Statutes Annotated, §24-103-202.5--Low tie bid awards. Tie bid preference to Colorado resident bidder.

Statute text Colorado Revised Statutes Annotated, §24-30-1203--Public agencies shall purchase products and services directly from nonprofit agencies for persons with severe disabilities agencies whenever such products and services are available at a price, including profit, overhead materials and labor, determined to be reasonable.

Colorado Revised Statutes Annotated, §24-30-1403--Professional Services State agencies purchasing professional services shall give preference to Colorado firms when qualifications are equal.

Colorado Revised Statutes Annotated, §24-103-202.5--Preference for resident bidder in "low tie bids" for award of a supply contract. "Low tie bids" means low responsible bids from bidders that are identical in amount and that meet all the requirements and criteria set forth in the invitation for bids. (C.R.S. §24-103-101)

Colorado Revised Statutes Annotated, §26-8.2-103--Preference for products from the Colorado Rehabilitation Center for the Visually Impaired when products or services conform to the required standards, public agencies shall purchase such products and services, when available, directly from the center. The price determined by the center shall be an amount equal to the cost of raw materials, labor, overhead, and delivery.

Colorado Revised Statutes Annotated, §43-1-1406--Design-build Contracts. Department of Transportation shall allow a preference to Colorado residents in awarding an adjusted score design-build contract unless it would conflict with Federal requirements.

CONNECTICUT:

Connecticut General Statutes, §4a-59--Preference in tie bids is given to supplies, materials and equipment produced, assembled or manufactured in the State of Connecticut and services originating and provided for in the State of Connecticut.

Connecticut General Statutes, §10-298b--Preference for all departments, institutions, or agencies supported in whole or in part by the State of Connecticut to purchase products made or manufactured or services provided by blind persons under the direction or supervision of the Board of Education and Services for the Blind. Preference does not apply to articles produced or manufactured by the Department of Correction Industries in the State of Connecticut, and emergency purchases.

Connecticut General Statutes, §17b-656--Preference for any department, institution, or agency supported in whole or in part by the State of Connecticut to purchase products and services rendered by persons with disabilities, except (1) articles produced or manufactured by blind persons, (2) articles produced or manufactured by the Department of Corrections, and (3) emergency purchases.

Connecticut General Statutes, §18-88(g)--Preference for each state department, agency, commission or board to purchase its necessary products and services from the Correctional Institutions and Department of Correction Industries, provided they are comparable in price and quality and in sufficient quantity as may be available outside the institutions.

DELAWARE:

Delaware Code, Title 16, §9605--Mandatory preference for a product or service on the procurement list, from the Delaware Industries for the Blind and other severely disabled individuals, at the price established by the Commission if the product or service is available within the period required by that agency.

Delaware Code, Title 29, §6962--Preference for Delaware laborers, workers or mechanics in the construction of all public works for the State of Delaware or any political subdivision, or by firms contracting with the State or any political subdivision thereof.

DISTRICT OF COLUMBIA:

District of Columbia Code, Title 2, §2-303.01--Preference for the purchase of materials, equipment, and supplies produced in the District or sold by District-based businesses under rules set by the mayor.

District of Columbia Code, §2-217.03--Assistance programs for local business enterprise contractors, disadvantaged business enterprise contractors, and small business enterprise contractors.

(a) The Mayor pursuant to §2-217.06 shall make rules to assist local, small, or disadvantaged business enterprises and shall include preferences and set-asides. In evaluating bids and proposals, agencies shall award preference points as follows:

(b)(2)(A) Points

(i) Three points for resident business ownership;

(ii) Four points for local business enterprises;

(iii) Two points for businesses located in enterprise zones; and

(iv) Three points for disadvantaged business enterprises.

(B) A percentage reduction in price, in the case of bids, as follows:

(i) Three percent for resident business ownership;

(ii) Four percent for local business enterprises;

(iii) Two percent for businesses located in enterprise zones; and

(iv) Three percent for disadvantaged business enterprises.

(3) A bid or proposal from a qualified business enterprise may be entitled to any or all of the preferences provided in paragraph (2) of this subsection.

(c) A certified prime contractor shall perform at least 50% of the contracting effort, excluding the cost of materials, goods, and supplies, with its own organization and resources, and if it subcontracts, 50% of the subcontracted effort excluding the cost of materials, goods, and supplies shall be with certified local, disadvantaged, or small business enterprises.

(d) For construction contracts of up to $1 million, a certified prime contractor shall perform at least 50% of the on-site work with its own work force, excluding the cost of materials, goods, supplies, and equipment, and, if it subcontracts, 50% of its subcontracts, excluding the cost of materials, goods, supplies and equipment, shall be with certified local, small, or disadvantaged business enterprises

FLORIDA:

Florida Statutes, Title XVIII, §255.04--Preference in tie bids awarded to materialmen, contractors, builders, architects, and laborers

who reside in Florida for the purchase of material and in contracts for the erecting or construction of any public administrative or institutional building.

Florida Statutes, Title XIX, §283.35--Preference in tie bids for printing contracts awarded to bidders located within the State of Florida.

Florida Statutes, Title XIX, §287.045--Preference of 10% to responsive bidder who has certified that the products or materials contain at least the minimum percentage of recycled content and post consumer recovered material and up to an additional 5% preference to a responsible bidder who has certified that the products or material are made of materials recovered in Florida.

Florida Statutes, Title XIX, §287.082--Preference in tie bids for commodities manufactured, grown, or produced in the State of Florida.

Florida Statutes, Title XIX, §287.084--Reciprocal preference awarded to a bidder whose principal place of business is in the State of Florida for the purchase of personal property through competitive bidding. Reciprocal preference is awarded when lowest responsible bid is by a bidder whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state. Reciprocal preference is equal to the preference granted by the state from which the lowest bidder has his or her principal place of business. This section does not apply to transportation projects for which federal aid funds are available.

Florida Statutes, Title XIX, §287.087--Preference to a business that has implemented a drug-free workplace program in the procurement of commodities or contractual services by the state or any political subdivision.

Florida Drug-Free Workplace Program under Florida Statute §440.102 -"Commodity" means any of the various supplies, materials, goods, merchandise, food, equipment, and other personal property, including a mobile home, trailer, or other portable structure with floor space of less than 3,000 square feet, purchased, leased, or otherwise contracted for by the state and its agencies. "Commodity" also includes interest on deferred-payment commodity contracts. However, commodities purchased for resale are excluded from this definition. Further, a prescribed drug, medical supply, or device required by a licensed health care provider as a part of providing health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration for clients at the time the service is provided is not considered to be a "commodity." Printing of publications shall be considered a commodity when competitively bid.

Florida Statutes, Title XXX, §413.03--Priority to purchase any product or service from a qualified nonprofit agency for the blind or for other severely handicapped persons.

Florida Administrative Code, Title 25, §25-25.009--Preference awarded to bidders located within the State of Florida when awarding contracts, whenever commodities bid can be purchased at no greater expense than, and at a level of quality comparable to, those bid by a bidder located outside the State of Florida.

Florida Administrative Code, Title 25, §25-25.025--General Purchasing Procedures--Preference in tie bids awarded to a minority owned business.

"Minority business enterprise" means any small business domiciled in Florida, and which at least 51 % is owned by minority persons who are members of an insular group that is of a particular racial, ethnic, or gender makeup or national origin which has been subjected historically to disparate treatment . (Florida Statute, Title XIX, §288.703).

GEORGIA:

Georgia Code, Title 30, §30-2-4--All departments, subdivisions, and institutions of the State of Georgia are directed to give preference in purchases of goods manufactured at the Georgia Industries for the Blind.

Georgia Code, Title 50, §50-5-60--Preference in tie bids in the purchase and contracting of supplies, materials, equipment manufactured and printing produced in Georgia.

Preference in all cases shall be given to surplus products or articles manufactured or produced by other state departments, institutions, or agencies.

Reciprocal preference applied in favor of vendors resident in the State of Georgia or Georgia businesses.

Georgia Code, Title 50, §50-5-60.4--Preference given to compost and mulch for use in road building, land maintenance, and land development activities, that has been separated from the Georgia solid waste stream.

Georgia Code, Title 50, §50-5-61--Preference in tie bids for supplies, materials, equipment and agricultural products manufactured or produced in Georgia.

GUAM:

Guam Administrative Rules Title 2, Chapter 1, §1102.01--Preference for supplies and services offered by a government of Guam entity employing sheltered or disabled workers.

Guam Administrative Rules Title 2, Chapter 1, §1104--A preference for businesses licensed to do business on Guam and that maintain an office or other facility on Guam, whenever a business that is willing to be a contractor is:

(a) a licensed bona fide manufacturing business that adds at least twenty-five percent (25%) of the value of an item, not to include administrative overhead, using workers who are U.S. citizens or lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on their former citizenship in the Trust Territory of the Pacific Islands; or

(b) a business that regularly carries an inventory for regular immediate sale of at least fifty percent (50%) of the supply items to be procured; or

(c) a business that has a bona fide! retail our wholesale business location that regularly carries an inventory on Guam of a value of at least one half of the value of the bid or one hundred fifty thousand dollars ($150,000) whichever is less, of supplies and items of a similar nature to those being sought; or

(d) a service business actually in business doing a substantial portion of its business on Guam, and hiring at least ninety-five percent (95%) U.S. citizens, lawfully admitted permanent residents or nationals of the United States, or persons who are lawfully admitted to the United States to work, based on‘ their citizenship in any of the nations previously comprising the Trust Territory of the Pacific Islands. Procurement of supplies and services from off-Guam may be made if no business for such supplies or services may be found on Guam or if the total cost of F.O.B. job site, unloaded, or procurement from off-Guam is no greater than eighty-five percent (85%) of the total cost F.O.B. job site, unloaded, of the same supplies or services when procured from a business licensed to do business on Guam that maintains an office or other facility on Guam and that is one of the above-designated businesses entitled to preference.

HAWAII:

Hawaii Revised Statutes, Title 9, §103D-1002

Preference of 3% for Class I Hawaii products that have 25 % to 49 % of their manufactured cost in Hawaii.

Preference of 5% for Class II Hawaii products that have 50 % to 74 % of their manufactured cost in Hawaii.

Preference of 10% for Class III Hawaii products that have 75 % or more of their manufactured cost in Hawaii.

Hawaii products mean products that are mined, excavated, produced, manufactured, raised, or grown in the state where the input constitutes no less than 25 % of the manufactured cost. (H.R.S., §103D-1001)

Hawaii Revised Statutes, Title 9, §103D-1003--Preference of 15% is awarded to contracts in which all work will be performed in the State of Hawaii for printing, binding or stationery, including all preparatory work, presswork, bindery work, and any other production-related work. Where bids are for work performed in-state and out-of-state, the amount bid for work performed out-of-state shall be increased by 15 %.

Hawaii Revised Statutes, Title 9, §103D-1004--Reciprocal preference against bidders from those states that apply preferences. The amount of the reciprocal preference shall be equal to the amount by which the non-resident preference exceeds any preference applied by the State of Hawaii.

Hawaii Revised Statutes, Title 9, §103D-1006 and Weil's Code of Hawaii Rules, Title 3, Chapter 124, §§3-124-30 to 35--Preference is awarded in tie bids for software development to Hawaii software development businesses.

Hawaii Revised Statutes Title 9, §103D-1009--A 5% preference shall be given to services provided by nonprofit corporations or public agencies operating qualified community rehabilitation programs in conformance with criteria established by the Hawaii department of labor and industrial relations.

Hawaii Revised Statutes, Title 13, §201-4--The department of business, economic development and tourism may hire qualified private and public agencies, associations, firms, or individuals provided that preference is given to contractors within the state.

Weil's Code of Hawaii Rules, Title 3, Chapter 124, §3-124-5--Where all other criteria are equal, preference is given to Hawaii products as long as the price does not exceed the price of a similar non-Hawaii product by more than 3%, where class I registered Hawaii products are involved, or 5% where class II registered Hawaii products are involved, or 10% where class III registered Hawaii products are involved.

Weil's Code of Hawaii Rules, Title 3, Chapter 124, §3-124-31--"Hawaii software development business" means any person, agency, corporation, or other business entity with its principal place of business or ancillary headquarters located in the State of Hawaii and which proposes to obtain 80 % of the labor for software development from persons domiciled in Hawaii.

Weil's Code of Hawaii Rules, Title 3, Chapter 124, §3-124-34(a)--Price preference of 10 % applied to Hawaii software development businesses.

Weil's Code of Hawaii Rules, Title 3, Chapter 124, §3-124-44(a)--Preference of 7% for in-state contractors bidding on public works contracts.

Weil's Code of Hawaii Rules, Title 16, Chapter 77, §16-77-1.14--Instruction to Bidders. Bidders seeking a Hawaii preference must identify the class and percentage of Hawaii product in their bid. The price bid for a Hawaii product will be decreased 3%, 5 % or 10 % for Class I, Class II or Class III products. (See Title 9, §103D-1002 above) In the case of a tie bid, preference will be given to registered Hawaii products. Reciprocal consideration will be given to out of state products and will be added to the out of state bid.

IDAHO:

Idaho Code, Title 60, §60-101--Preference for all printing, binding, engraving and stationery work to be executed within the State of Idaho, except when, as provided in §60-103 of the Idaho Code, the instate charge is higher than is normally charged private individual or requires a technique or process not available in Idaho when that technique or process is essential.

Idaho Code, Title 60, §60-103--Preference given to an Idaho person, firm or corporation proposing to execute printing, engraving, binding, and stationery work in the State of Idaho unless the price is more than 10% higher than a bid to perform the work out of state.

Idaho Code, Title 67, §67-2348--Reciprocal preference applied in favor of Idaho domiciled contractors on public works contracts.

Idaho Code, Title 67, §67-2349--Reciprocal preference for the purchase of any materials, supplies, services or equipment is awarded to a responsible bidder domiciled in Idaho.

Any bidder domiciled outside the boundaries of the State of Idaho may be considered an Idaho domiciled bidder provided that for a period of the year the bidder maintains in Idaho a fully staffed offices, or fully staffed sales offices or divisions, or fully staffed sales outlets, or manufacturing facilities, or warehouses or other necessary related property; and if a corporation be registered and licensed to do business in the State of Idaho.

Idaho Code, Title 67, §67-5718--Where both the bids and quality of property offered are the same, preference shall be given to property of local and domestic production and manufacture or from bidders having a significant Idaho economic presence as defined in the Idaho Code. In connection with the award of any contract for the placement of any order for state printing, binding, engraving or stationery work, the provisions of §§60 - 101, shall apply to the extent that the same may be inconsistent with any requirements contained in this section.

Idaho Code, Title 44. Chapter 10 §44-1001--In all state, county, municipal, and school construction, repair, and maintenance work under any of the laws of this state the contractor, or person in charge thereof must employ ninety-five percent (95%) bona fide Idaho residents as employees on any such contracts except where under such contracts fifty (50) or less persons are employed the contractor may employ ten percent (10%) nonresidents, provided however, in all cases such employers must give preference to the employment of bona fide Idaho residents in the performance of such work; provided, that in work involving the expenditure of federal aid funds this act shall not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged soldiers, sailors, and marines, prohibiting as unlawful any other preference or discrimination among the citizens of the United States.

Idaho Code, Title 44, Chapter 10, §44-1002--In all contracts for state, county, municipal, and school construction, repair, and maintenance work the contractor must employ 95% bona fide Idaho residents as employees on any job under any such contract except where under such contracts 50 or less persons are employed the contractor may employ 10% nonresidents, provided, however, in all cases employers must give preference to the employment of bona fide residents in the performance of said work.

Idaho Code, Title 50, Chapter 3, §50-341--In contracts by cities, when the expenditure contemplated exceeds $25,000, where both the

bids and quality of property offered are the same, preference shall be given to property of local and domestic production and manufacture or from bidders having a significant Idaho economic presence as defined in §67-2349, Idaho Code. (See above.)

Idaho Code Title 40, Chapter 9, §40-906. and Title 31 Chapter 40, §31-4003--When the expenditure contemplated for highways and bridges, or expenditures for which bids are required, exceeds $5,000, but not $25,000 the district shall obtain price or cost quotations from at least 3 responsible vendors in the business of supplying such goods or services. To enhance small business bidding opportunities, the district shall seek a minimum of 3 price quotations from registered vendors having a significant Idaho economic presence as defined in §67-2349, Idaho Code. If the district finds that it is impractical or impossible to obtain 3 quotations for the proposed transaction, the district may acquire the property in any manner the district deems best. The district shall then procure the goods or services from the responsible vendor quoting the lowest price. When the expenditure contemplated exceeds $25,000, it shall be contracted for and let to the lowest responsible bidder. Where both bids and quality of property offered are the same, preference shall be given to the property of local and domestic production and manufacture or from bidders having a significant Idaho economic presence as defined in §67-2349, Idaho Code.

ILLINOIS:

Illinois Compiled Statutes Annotated, 30 ILCS 500/45-10--Reciprocal Preference--When a contract is to be awarded to the lowest responsible bidder, a resident bidder is allowed a preference as against a non-resident bidder from any state that gives or requires a preference to bidders from that state.

If only non-residents bid, the purchasing agency is within its right to specify that Illinois labor and manufacturing locations be used in the manufacturing process, if applicable.

A resident bidder is defined as a bidder who is a person or foreign corporation authorized to transact business in the State of Illinois and has a bona fide establishment for transacting business within the State of Illinois.

Illinois Compiled Statutes Annotated, 30 ILCS 500/45-30--Illinois purchasing agency are to give preference to articles, materials, services, food stuffs, and supplies produced or manufactured by persons confined to the Department of Corrections.

Illinois Compiled Statute Annotated, 30 ILCS §500/45-35--Preference to procure, without advertising bids, supplies and services from Illinois Sheltered workshops for the severely handicapped.

Illinois Compiled Statutes Annotated, 30 ILCS §500/45-50--A preference is awarded to a bidder for the use of agricultural products grown in Illinois.

Illinois Compiled Statutes Annotated, 30 ILCS 500/45-55--A preference is awarded to a bidder, in contracts requiring the procurement of plastic products, who fulfill the contract through the use of plastic products made from Illinois corn by-products.

Illinois Compiled Statutes Annotated, 30 ILCS §500/45-60--Preference to award contract for vehicles to a bidder or offeror who will fulfill the contract through the use of vehicles powered by ethanol produced from Illinois corn or bio diesel fuels produced from Illinois soybeans.

Illinois Compiled Statutes Annotated, 30 ILCS §520/2--Preference given to vendors in those states whose preference laws do not prohibit the purchase by the public institutions of commodities grown or produced in Illinois. Applies to all Illinois state agencies. The term "institution" means all institutions maintained by the State of Illinois or any political subdivision thereof or municipal corporation therein, including municipally-owned public utility plants. (30 ILCS §520/1)

Illinois Compiled Statutes Annotated, 30 ILCS §555/1--Every institution in the State of Illinois is required to give a 10% preference to the cost of coal mined in the State of Illinois if used as fuel. The term "institution" means all institutions maintained by the State of Illinois or any political subdivision thereof or municipal corporation therein, including municipally-owned public utility plants. (30 ILCS §555/2)

Illinois Compiled Statutes Annotated, 30 ILCS §565/2--Preference for steel products produced in the United States in all contracts for construction, reconstruction, repair, improvement or maintenance of public works. "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed, or processed by a combination of two or more such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process. (30 ILCS §565/3)

Illinois Administrative Code, 44 Ill. Admin. Code §1.4535--Preference is given to articles, materials, services, food stuffs and supplies that are produced or manufactured by persons with disabilities in state use sheltered workshops.

Illinois Administrative Code, 44 Ill. Admin. Code §500.1110 --Resident Vendor Preference--An Illinois resident bidder shall be allowed a preference as against a non-resident bidder from any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the non-resident bidder. An Illinois resident bidder is a person or foreign corporation authorized to transact business in Illinois and who has a bona fide establishment for transacting business within Illinois.

Illinois Administrative Code, 44 Ill. Admin. Code §526.4530--Universities must give a preference to supplies or services made available from Correctional Industries for procurements by public institutions of higher education.

Illinois Administrative Code, 44 Ill. Admin. Code §1120.4510--Preference for Illinois resident vendor in tie bids. An "Illinois resident vendor" is a person authorized to transact business in this State and having a bona fide establishment for transacting business within this State and was actually transacting business on the date when any competitive solicitation for a public contract was first advertised or announced. An Illinois resident vendor who would perform the services or provide the supplies from another state, or produces or performs at least 51% of the goods or services in another state, will be considered a resident of the other state as against an Illinois resident vendor who performs the services or provides the supplies from Illinois. Reciprocal preference is applied against vendors considered residents of another state if the state has an in-state preference.

INDIANA:

Indiana Code, Title 5, Article 22, Chapter 15, §5-22-15-20--A reciprocal preference may be awarded in favor of Indiana businesses by a governmental body. This section does not apply to the Indiana State Lottery Commission.

Indiana Code, Title 5, Article 22, Chapter 15, §5-22-15-21--A preference for governmental bodies to purchase supplies manufactured in the United States. This section does not apply to the Indiana State Lottery Commission.

Indiana Code, Title 5, Article 22, Chapter 15, §5-22-15-22--Preference applied for coal mined in Indiana when purchasing coal for fuel. The preference does not apply to Lottery Commission or if federal law requires the use of low sulphur coal in the circumstances for which the coal is purchased.

Indiana Code, Title 5, Article 22, Chapter 15, §5-22-15-23--A preference of 15% is awarded to an Indiana small business. Small business is defined as a business that is independently owned and operated; is not dominant in its field of operation; and has the following criteria: (1) A wholesale business is not a small business if its annual sales for its most recently completed fiscal year exceed $4,000,000. (2) A construction business is not a small business if its average annual receipts for the preceding three (3) fiscal years exceed $4,000,000. (3) A retail business or business selling services is not a small business if its annual sales and receipts exceed $500,000. (4) A manufacturing business is not a small business if it employs more than 100 persons. (Burns Indiana Code, §5-22-14-3)

Indiana Code, Title 4, Article 13, Chapter 6, §2.7 (See IC5-15-20 below)--Preference for Indiana businesses with principal place of business located in Indiana, that pays a majority of its payroll (in dollar volume) to residents, and has a substantial positive economic impact on Indiana.

(c) There are the following price preferences for a contractor that is an Indiana business:

(1) Five percent (5%) for a contract expected by the division to be less than five hundred thousand dollars ($500,000).

(2) Three percent (3%) for a contract expected by the division to be at least five hundred thousand dollars ($500,000) but less than one million dollars ($1,000,000).

(3) One percent (1%) for a contract expected by the division to be at least one million dollars ($1,000,000).

(e) The division shall award a contract to the lowest responsive and responsible contractor, regardless of the preference provided in this section, if:

(1) the contractor is an Indiana contractor; or

(2) the contractor is a contractor from a state bordering Indiana and the contractor's home state does not provide a preference to the home state's contractors more favorable than is provided by Indiana law to Indiana contractors.

Indiana Code, Title 5, Article 22, Chapter 15, §20 IC 5-22-15-20 (see definition of Indiana business listed under IC 4-13.6-6-2.7 above) A governmental body may adopt rules to give a preference to an Indiana business that submits an offer for a purchase under this article if the criteria listed in IC 4-13.6-6-2.7 apply Rules must provide that a contract shall be awarded to the lowest responsive and responsible offeror, regardless of the preference provided under this section, if:

(1) the offeror is an Indiana business; or

(2) the offeror is a business from a state bordering Indiana and the offeror's home state does not provide a preference to the home state's businesses more favorable than is provided by Indiana law to Indiana businesses

Indiana Code, Title 5, Article 22, Chapter 11, §1IC 5-22-11-1--Requirement to purchase from the department of correction. Sec. 1. Preference for supplies and services produced or manufactured by the Indiana Department of Correction unless the supplies and services cannot be furnished in a timely manner as added by P.L.49-1997, SEC.1.

IOWA:

Iowa Code Annotated, Title I, Subtitle 7, Chapter 18, §18.6--Preference in tie bids for equipment, supplies or services to be awarded to Iowa products and purchases from Iowa based businesses. Reciprocal preference shall be applied against states that mandate a percentage preference for the purchase of equipment, supplies, or services.

Preference for products produced for sale by sheltered workshops, work activity centers, and other special programs funded in whole or in part by public moneys that employ persons with mental retardation or other developmental disabilities or mental illness if the products meet the required specifications. Preference for products produced for sale by employers of persons in supported employment. This section does not apply to Iowa technology center contracts in support of activities performed for another governmental entity, either state or federal. The Iowa technology center is an entity created by a Chapter 28E agreement entered into by the department of public defense.

Iowa Code Annotated, Title II, Subtitle 3, Chapter 73, §73.1 I.C.A. §73.1--Preference by state, county, township, school district, or city commission, boards, committees, officer or other governing bodies for products and provisions grown and coal produced within Iowa when found in marketable quantities, reasonable quality, and may be purchased without additional cost over products from outside the state. This does not apply to a school district participating in the federal school lunch program. All requests for proposals for materials, products, supplies, provisions and other articles and services shall not be written in a way to exclude an Iowa-based company capable of filling the needs from submitting a responsive proposal.

Iowa Code Annotated, Title II, Subtitle 3, Chapter 73, §73.6--Preference for the purchase of coal that is mined or produced within the State of Iowa by producers who are complying with all the workers' compensation and mining laws of the state.

Iowa Code Annotated, Title II, Subtitle 3, Chapter 73, §73.16--State Agencies, community colleges, education agencies and school districts must attain a goal making 10% of their purchases of goods and services, including construction, but not including utility services, from certified targeted small businesses under the Iowa uniform small business vendor application program.

Iowa Code Annotated, Title II, Subtitle 3, Chapter 73A, §73A.21--Reciprocal preference is applied by Iowa state agencies and political subdivisions in public improvement contracts. The reciprocal preference is applied against a nonresident bidder from a state or foreign country which gives or requires a preference to bidders from that state or foreign country.

Public improvement means a building or other construction work which includes road construction, reconstruction and maintenance projects. (See Iowa Code, Chapter 73, §73A.1; and Iowa Administrative Code, §27-6.2)

Resident bidder means a person authorized to transact business in the state of Iowa and who has a place of business for transacting business within the state at which it has conducted business for at least 6 months. 51% of the resident bidder's common stock has to be owned by residents of Iowa.

Iowa Code Annotated, Title IX, Local Gov't Subtitle 1, Chapter 331, §331.341--Preference by County Boards for Iowa products and labor.

Iowa Code Annotated, Title VII, Subtitle 7, Chapter 304, §304A.13--Preference for the selection of fine art works created or otherwise made by living or deceased Iowa artists.

Iowa Code Annotated, Title I, Subtitle 4, Chapter 8A, Subchapter 3, §8A.311--Tie-breaking and reciprocal preference for goods produced in Iowa unless quantity too small to be effective.

KANSAS:

Kansas Statutes Annotated, §75-3740--Preference in tie bids awarded to bidder within the State of Kansas.

Kansas Statutes Annotated, §75-3740a--Reciprocal preference is applied against a contractor domiciled outside of the State of Kansas for contracts for the erection, construction, alteration, repair or addition to any public building or structure; or for any purchase of goods, merchandise, materials, supplies or equipment of any kind.

KENTUCKY:

Kentucky Revised Statutes, Title VI, §45A.470--Preference for all governmental bodies and political subdivisions of the State of Kentucky to purchase commodities or services from the Kentucky Department of Corrections. Second preference given to the Kentucky Industries for the Blind.

Kentucky Revised Statutes, Title VI, §45A.873--A reciprocal preference for Kentucky bond counsel firms equal to the preference that the out-of-state firm receives in its state of origin when that firm as an in-state firm competes against out-of-state firms for state bond counsel business.

Kentucky Revised Statutes, Title VII, §56.005--Preference for composted materials collected at Kentucky state and local facilities, to be used by state agencies for projects including, but not limited to, roadway construction, reconstruction, or maintenance, restoration of sites including abandoned mine lands reclamation, stream bank stabilization, and reforestation.

Kentucky Revised Statutes, Title VII, §56.005--Preference for composted materials collected at Kentucky state and local facilities, to be used by state agencies.

Kentucky Revised Statutes, Title XVII, §197.210 and Title VI, §45A.470--Preference to purchase products made by Kentucky prison industries.

Kentucky Revised Statutes, Title XII, §148.835--Pilot projects in state parks must buy Kentucky raised catfish, herbs, vegetables, fruit and nuts.

Kentucky Revised Statutes, Title VI, §45A.645--Where available, agencies are encouraged to purchase Kentucky-grown agricultural products, not including tobacco, from vendors participating in the Kentucky Grown Logo or labeling program.

Kentucky Administrative Regulation Title 200, Chapter 5, §325--A state agency shall consider Kentucky-made wood products on master agreements.

LOUISIANA:

Louisiana Revised Statutes, Title 27, Chapter 5, Part VI.--In purchasing or contracting for goods and services, the casino gaming operator and the corporation shall give preference and priority to Louisiana residents, laborers, vendors, and suppliers except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operational efficiency. The corporation shall give preference to select a casino operator who demonstrates the willingness and ability to purchase and contract for goods and services from or with Louisiana residents, laborers, vendors, and suppliers.

Louisiana Revised Statutes, Title 30, Subtitle II, Chapter 18, §30:2415--5% preference for state agencies in Louisiana to purchase recycled paper and paper products, tissue and paper towels that contain recycled content, provided that such products are either manufactured in Louisiana or contain recovered materials diverted or removed from the solid waste stream which otherwise would go into a Louisiana landfill.

Louisiana Revised Statutes, Title 38, Chapter 10, Part I, §38:2184--Preference given to supplies material, or equipment produced or offered by Louisiana citizens, cost and quality being equal.

Louisiana Revised Statutes, Title 38, Chapter 10, Part II, §38:2225--Reciprocal preference against nonresident contractors in public works contracts.

Louisiana Revised Statutes, Title 38, Chapter 10, Part IV, §38:2251--A preference is applied for products assembled, processed, produced or manufactured in Louisiana as long as the price does not exceed the cost of such products from out of state by more than 10%.

A preference is applied for processed meat, meat products, domesticated catfish and produce grown outside of the State of Louisiana, but processed in the State of Louisiana if it does not exceed the cost of these items processed outside the state by 7%.

A preference is applied for produce produced and processed in Louisiana as long as it does not exceed the cost of produce produced and processed outside the state by more than 10%.

A preference is applied for purchasing Louisiana products which include materials, supplies and equipment as long as they do not exceed the cost of non Louisiana products by more than 10%. "Louisiana products" means products which are manufactured, processed, produced, or assembled in Louisiana.

The following products are given tie breaking preference where quality and cost are equal:

Paper and paper products are to be manufactured and converted in Louisiana. "Manufactured" means the process of making a product suitable for use from raw materials by hand or by machinery. "Converted" means the process of converting a roll stock into a sheeted and fully packaged product in a full-time converting operation.

*Agricultural or forestry products*are to be produced, manufactured or processed in Louisiana.

Meat and meat products shall be processed in Louisiana from animals which are alive at the time they enter the processing plant.

Seafood shall be harvested in Louisiana seas or other Louisiana waters and products produced from such seafood shall be processed in Louisiana.

Domesticated catfish shall be processed in Louisiana from animals which were grown in Louisiana.

Eggs and egg products are to be processed from eggs laid in Louisiana. (See §39:1595 for percentage of preference)

Louisiana Revised Statutes, Title 38, Chapter 10, Part IV, §38:2251.1--A preference for milk and dairy products produced or processed in Louisiana unless it exceeds the cost of milk from outside the state by 10%.

Louisiana Revised Statutes, Title 38, Chapter 10, Part IV, §38:2251.2--A 10% preference for steel rolled in Louisiana unless it exceeds the cost of rolled steel from outside the state by 10%.

Louisiana Revised Statutes Title 38, Chapter 10, Part IV, §2252--Preference to materials, supplies and provisions, produced, manufactured or grown in Louisiana quality being equal to articles offered by competitors outside of the state.

Louisiana Revised Statutes, Title 38, Chapter 10, Part IV, §2261--Preference for goods manufactured, or services performed, by Louisiana state operated sheltered workshops for severely handicapped individuals.

Louisiana Revised Statutes, Title 39, §39:1595(J)--A reference is applied for the procurement or purchase of Louisiana products whose source is a clay which is mined or originates in Louisiana and which is manufactured, processed, or refined in Louisiana for sale as an expanded clay aggregate form different than its original state, and which is equal in quality to such products manufactured, processed, or refined outside of Louisiana as long as the price is not more than 10% higher than such products from outside the state.

Louisiana Revised Statutes, Title 38, §38:2253--Preference in tie bids awarded to firms doing business in the State of Louisiana.

Louisiana Revised Statutes, Title 39, §39:1595--Preferences only apply to bidders whose Louisiana business workforce is comprised of a minimum of 50% of Louisiana residents. A preference is applied for products produced, manufactured, assembled, grown or harvested in Louisiana; for meat and meat products and domesticated catfish processed in Louisiana; and for eggs or crawfish processed in Louisiana if the cost is not more than 7% higher than the cost of these products processed out of state.

Louisiana Revised Statutes, Title 39, §39:1595.1--Reciprocal preference in favor of contractors domiciled in Louisiana is awarded in contracts, except contracts for the construction, maintenance, or repair of highways and streets.

Louisiana Revised Statutes, Title 39, §39:1595.2--Reciprocal preference in favor of contractors domiciled in Louisiana is awarded in public works contracts.

Louisiana Revised Statutes, Title 39, §39:1595.3--A preference is awarded to resident vendors to organize or administer rodeos and livestock shows as long as they do not exceed in cost by more than 10% those services available from outside the state.

Louisiana Revised Statutes, Title 39, §39:1595.5--A preference is awarded for items purchased from a retail dealer located in the state of Louisiana provided the cost does not exceed by more than 10 % the cost of items purchased from a retail dealer located outside the state.

Louisiana Revised Statutes, Title 39, §39:1595.6 --A preference is applied for purchasing steel rolled in Louisiana as long is it does not cost more than 10% more than steel rolled outside the state.

Louisiana Revised Statutes, Title 39, §39:1733--Set aside for awarding to small businesses an amount not to exceed 10 % of the value of anticipated total state procurement of goods and services, excluding construction.

Louisiana Revised Statutes, Title 46, Chapter 38 Part III, Subpart B, §333--Preference to blind persons, under the administration of the Louisiana Department of Social Services, in the operation of vending stands, vending machines, and other small business concessions to be operated on the premises on State controlled properties.

Louisiana Revised Statutes, Title 48, Chapter 1, Subpart B.--Preference in letting contracts for public works. Provides a reciprocal preference applied to nonresident contractors bidding on a public works contract.

Louisiana Administrative Code, Title 34, Part 1, Chapter 5, §529--Tie bid--In state contracts awarded by competitive sealed bidding; resident business are preferred over nonresident businesses where there is a tie bid.

MAINE:

Maine Revised Statutes Annotated, Title 5, §1824--Political subdivisions, governmental agency or public benefit corporation of the State must purchase, when and where possible, from the Maine Center for the Blind and Visually Impaired.

Maine Revised Statutes Annotated, Title 5, §1825-B--Preference in tie bids to award contracts to in-state bidders or to bidders offering commodities produced or manufactured in the State of Maine if the price, quality and availability and other factors are equivalent. Reciprocal preference applied in favor of Maine businesses.

Maine Revised Statutes Annotated, Title 5, §1826-C--Preference for products and services from work centers. Second preference given to purchases from the Department of Corrections if no bid is received from a work center.

"Work center" means a program that provides vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement. (MR.S. 1826-B)

Maine Revised Statutes Annotated, Title 7, Chap 8-A, §213--Assuming reasonable similarity in quality, quantity and availability with other foodstuffs offered for sale, state or school purchasers shall buy meat, fish, dairy products, excluding milk and eggs, and species of fruits and fresh vegetables, directly from Maine food producers or from food brokers who assist in the distribution of foodstuffs produced or harvested by Maine food producers as long as it does not increase institutional meals more than 30 cents per day or school meals more than 7 cents per meal.

Maine Revised Statutes Annotated, Title 26, Chapter 15, §1301--Preference in tie bids awarded to workmen and bidders who are residents of the State of Maine for contracts that are greater than $1,000 for constructing, altering, repairing, furnishing or equipping its buildings or public works.

MARYLAND:

Annotated Code of Maryland, Title 3, §3-515--A unit of State government shall purchase goods or services that are available from State Use Industries at a price not exceeding the prevailing average market price.

Annotated Code of Maryland, Article 24, Title 8, §8-102--"Maryland firm" means a business entity that has its principal office in the State of Maryland.

Reciprocal preference. When awarding a contract by competitive bidding, if the state in which a nonresident firm is located gives an advantage to its resident businesses, a political subdivision or any instrumentality of government within the State may give an identical advantage to the lowest responsive and responsible bid from a Maryland firm over that of the nonresident firm.

Annotated Code of Maryland, Title 14, §14-103--Priority of preferences. The State or a State aided or controlled entity shall buy supplies and services from: (1) State Use Industries, as provided in Title 3, Subtitle 5 of the Correctional Services Article, if State Use Industries provides the supplies or services; (2) Blind Industries and Services of Maryland, if: (i) Blind Industries and Services of Maryland provides the supplies or services; and (ii) State Use Industries does not provide the supplies or services; or (3) sheltered workshops if: (i) a sheltered workshop provides the supplies or services; (ii) neither State Use Industries nor Blind Industries and Services of Maryland provides the supplies or services; and (iii) the State or a State aided or controlled entity is not required by law to buy the supplies or services from any other unit of the State government.

Annotated Code of Maryland, State Finance and Procurement Code, Title 14,--Preference applied to a small business as long as price does not exceed low bid by more than 5%. Percentage preference may vary among industries to account for their particular characteristics. "Small business" preference means a purchase request for which

bids are invited from a list of qualified bidders that includes small businesses. (Md. State Finance and Procurement Code, §14-201, 202)

Annotated Code of Maryland, State Finance and Procurement Code, Title 14, §14-207--5% preference by General Services, Department of Transportation, or the University System of Maryland for a procurement contract designated for a small business preference to the small business that is a responsible bidder.

Annotated Code of Maryland, State Finance and Procurement Code, §14-401--"Resident bidder" means a bidder whose principal office is located in the State of Maryland. Reciprocal preference applied in favor of resident bidders in procurement contracts for supplies and services. "Preference" includes a percentage preference; an employee residency requirement; or any other provision that favors a resident over a nonresident.

Annotated Code of Maryland, State Finance and Procurement Code, §14-404--Preference for the use of Maryland coal in the design of a heating system for a building or facility in which the State of Maryland provides at least 50 % of the money for construction of the building or facility.

MASSACHUSETTS:

Massachusetts General Laws Annotated, Part I, Title II, Chapter 7, §22--Preference in tie bids for supplies and materials manufactured and sold within the State of Massachusetts. An additional preference may be applied for supplies and materials manufactured and sold in cities and towns of Massachusetts that are designated as depressed areas as defined by the Department of Labor of the United States.

Massachusetts General Laws Annotated, Part I, Title XXI, Chapter 149, §179A--Preference in tie bids to U.S. citizens in awarding of public work contracts.

MICHIGAN:

Michigan Statutes Annotated, Chapter 18, Article 2, §18.1261(1)--Preference in tie bids for services or products manufactured by Michigan-based firms.

Michigan Statutes Annotated, Chapter 18, Article 2, §18.1268(5)--Reciprocal preference in favor of certified Michigan business applied in procurements in excess of $100,000.

Michigan Statutes Annotated, Chapter 18, §18.1702--Preference in tie bids for the purchase of fish harvested in the waters of the State of Michigan.

Michigan Statutes Annotated, Chapter 24, §24.6--Printing paid wholly or in part with state funds must be printed within the State of Michigan. Firms must use the allied printing trades council union label.

Michigan Statutes Annotated, Chapter 45, §45.85--County purchasing agent shall give tie-breaking preference in contracts for all supplies, merchandise, printing and articles of every description, to bidders who have an established local business in the county.

MINNESOTA:

Minnesota Statutes, Annotated, §16C.06--Reciprocal preference applied against other states with resident preference in the acquisition of goods and services. A resident vendor shall be allowed a preference over a nonresident vendor from a state that gives or requires a preference to vendors from that state. The preference shall be equal to the preference given or required by the state of the nonresident vendor.

Minnesota Statutes, Annotated, §16C.16--Set-aside of at least 25% of total state procurement of goods and services, including printing and construction to be awarded to small businesses. Small businesses are to have their principal place of business in Minnesota.

A preference of up to 6% is to be applied to small targeted group businesses. Small targeted group businesses are majority owned and operated by women, persons with a substantial physical disability, or specific minority groups.

Up to a 4% preference may be awarded in the amount bid on state construction to small businesses located in an economically disadvantaged area. A business is considered to be in an economically disadvantaged area if (1) the owner resides in or the business is located in a county in which the median income for married couples is less than 70 % of the state median income for married couples; (2) the owner resides in or the business is located in an area designated a labor surplus area by the United States Department of Labor; or (3) the business is a rehabilitation facility or work activity program.

Minnesota Administrative Code, §1230.0900--Tied Bids. Whenever a tie involves a Minnesota firm and one whose place of business is outside the state of Minnesota, preference shall be given to the Minnesota firm.

Minnesota Administrative Code, §1230.1830--A certified economically disadvantaged small business may be awarded up to a 6% preference for commodities and services and a 4 % preference for construction projects.

MISSISSIPPI:

Mississippi Code 1972 Annotated, §31-3-21--Preference in tie bids given to resident bidders of the State of Mississippi for public contracts; and reciprocal preference in favor of in-state bidders for public contracts.

"Public project" is any project for the erection, building, construction, reconstruction, repair, maintenance or related work which is funded in whole or in part with public funds. (See §31-3-1)

Mississippi Code 1972 Annotated, §31-5-17--Public works; residency requirements of laborers. Every public officer, contractor, superintendent, or agent engaged in or in charge of the construction of any state or public building or public work of any kind for the State of Mississippi or for any board, city commission, governmental agency, or municipality of the State of Mississippi shall employ only workmen and laborers who have actually resided in Mississippi for two years next preceding such employment.

Mississippi Code 1972 Annotated, §31-5-23--Public Works Projects--In the construction of any building, highway, road, bridge or other public work or improvement a preference is awarded in tie bids for the use of only materials grown, produced, prepared, made and or manufactured within the State of Mississippi. The paint, varnish and turpentine used in construction are to be produced in Mississippi.

Mississippi Code 1972 Annotated, §31-7-15--Preference in tie bids given to resident bidders of the State of Mississippi for commodities grown, processed or manufactured within the State of Mississippi.

Any foreign manufacturing company with a factory in the state and with over 50 employees working in the state shall have preference over any other foreign company where both price and quality are the same, regardless of where the product is manufactured

Mississippi Code 1972 Annotated, §31-7-16--Purchase of certain equipment capable of being manufactured or assembled in separate units. In the event equipment is required which is capable of being manufactured or assembled in separate units such as school bus chassis and bodies or other bodies of equipment installed upon chassis, and there is a manufacturer of such bodies located within the State of

Mississippi, a public purchase may be made of such chassis and such body or equipment as separate items.

Mississippi Code 1972 Annotated, §31-7-18--Preference to lowest bid received from a motor vehicle dealer domiciled within the county of the governing authority for any motor vehicle having a gross vehicle weight rating of less than twenty-six thousand (26,000) pounds that shall not exceed a sum equal to three percent (3%) greater than the price or cost which the dealer pays the manufacturer.

Mississippi Code 1972 Annotated, §31-7-47--Preference in tie bids given to resident bidders of the State of Mississippi in the letting of public contracts, and reciprocal preference when awarding public contracts to out-of-state bidders.

Mississippi Code 1972 Annotated, §73-13-45--Preference in tie bids given to resident contractors of the State of Mississippi for professional engineering services; and reciprocal preference when awarding to out-of-state contractors for professional engineering services.

MISSOURI:

Missouri Revised Statutes, Title II, §8.280--Preference to use products from the mines, forests, and quarries of the State of Missouri for the construction or repair of public buildings. Preference is also given for using Missouri materials and labor.

Missouri Revised Statutes, Title IV, §34.060--Preference in tie bids to purchase materials, products, supplies, provisions, and all other articles produced or manufactured, made or grown within the State of Missouri. A preference in tie bids is also applied in favor of individuals doing business as Missouri firms, corporations, or individuals.

Missouri Revised Statutes, Title IV, §34.070--Preference in tie bids to all commodities manufactured, mined, produced or grown within the state of Missouri and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals.

Missouri Revised Statutes, Title IV, §34.073--Preference in tie bids for the performance of any job or service given to bidders doing business as Missouri firms, corporations or individuals, or which maintain Missouri offices or places of business.

Missouri Revised Statutes, Title IV, §34.076--Reciprocal preference applied against a bidder domiciled outside the boundaries of the State of Missouri for any public works or product. Reciprocal preference is awarded in favor to a bidder or contractor domiciled in Missouri for products and for public works contracts. Reciprocal preference does not apply to any contractor who is qualified for bidding purposes with the department of transportation and submits a successful bid where part of or all funds are furnished by the United States. It also does not apply to contracts for highways and public transportation where the bid is less than $5,000.

Missouri Revised Statutes, Title IV, §34.080--Preference in tie bids for the purchase of coal mined in the State of Missouri to be used by any institution supported in whole or in part by public funds of the state. In determining the cost of the coal mined either in the state of Missouri or an adjoining state, the cost of transportation is included in the bid. The term "institution" includes all institutions supported by public funds of the state, but does not include municipal corporations, political subdivisions or public schools.

Missouri Revised Statutes Title IV, §34.090--Preference is given to any products manufactured by any institution of the state of Missouri.

Missouri Revised Statutes, Title IV, §34.165--Preference of 5 bonus points awarded for products or services manufactured, produced or assembled in qualified nonprofit organizations for the blind.

Missouri Revised Statutes, Title IV, §34.363--Notice of state bidding opportunities shall be given to Missouri manufacturers or service providers. A list of Missouri products will be made available to all state agencies, public institutions of higher education and other interested parties. State agencies must make a good faith search of Missouri companies and products. The commissioner of the office of administration shall ensure state agencies follow the requirements of this section and the preference provisions in Chapter 34.

Missouri Statute §50.780--Counties and Townships may give preference to merchants and dealers within their counties provided the price offered is not above that offered elsewhere.

Missouri Code of State Regulations, Title 1, Division 40, 40-1.050--Bids/proposals submitted for products and services manufactured, produced or assembled in qualified nonprofit organizations for the blind or in sheltered workshops holding a certificate of approval from the Missouri Department of Elementary and Secondary Education shall be entitled to 5 bonus points in addition to other points awarded during the evaluation process. When bids are equal in all respects, any preferences shall be applied in accordance with applicable statute. (See above)

Missouri Code of State Regulations, Title 6, Division 250, Chapter 3, §020. Preference for Missouri goods and services as long as it does not increase cost except in emergencies or when not readily available.

MONTANA:

Montana Code Annotated, §18-1-102--Reciprocity--Montana resident bidders are allowed a reciprocal preference against nonresident bidders on public contracts for construction, repair and public works of all kinds, and the purchase of goods. The reciprocal preference given to the resident bidder must be equal to the preference given to the other state or country.

Montana Code Annotated, §18-1-103--Definitions--The word "resident " includes actual residence of an individual within the State of Montana for a period of more than 1 year immediately prior to bidding. In a partnership enterprise, limited liability company, or association, the majority of all partners or members must have been actual residents of the state of Montana for more than 1 year immediately prior to bidding. Domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents, but this qualification may be set aside and a successful bid disallowed when it is shown to the satisfaction of the board, commission, officer, or individual charged with the responsibility for the execution of the contract that the corporation is a wholly owned subsidiary of a foreign corporation or that the corporation was formed for the purpose of circumventing the provisions relating to residence.

Montana Code Annotated, §18-2-401--Definition for the purpose of labor used in construction contracts pursuant to §18-2-409.

Resident--A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. Persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana.

Montana Code Annotated, §18-2-403--In every public works contract, there must be inserted in the bid specification and the public works contract a provision requiring the contractor to give preference to the employment of bona fide residents of Montana in the performance of the work.

Montana Code Annotated, §18-2-409--Montana residents to be employed on state construction contracts. On any state construction project funded by state or federal funds, except a project partially funded with federal aid money from the United States Department of Transportation or where residency preference laws are specifically prohibited by federal law and to which the state is a signatory to the construction contract, at least 50% of the workers must be bona fide Montana residents, as defined in 18-2-401.

Montana Code Annotated, §18-7-107--All printing, binding and stationery work for the State of Montana is subject to the reciprocal preference in §18-1-102.

Montana Code Annotated, §32-2-105--Reciprocity. When another state imposes taxes, fines, penalties, licenses, fees, deposits of money or securities, or other obligations or prohibitions on building and loan associations of this state doing business in that state, the same obligations and prohibitions shall be imposed on associations or agents of that state conducting or attempting to conduct a building and loan business or a business of like kind or character in this state.

Montana Administrative Rules, STATE PROCUREMENT 2.5.408--Reciprocal preference against the bid of a nonresident bidder equal to the percent of the preference given to the bidder in the state or country in which the bidder is a resident applied only to an invitation for bid for supplies or an invitation for bid for non-construction services for public works.

NEBRASKA:

Nebraska Revised Statutes, §73-101.01--Reciprocal preference in favor of Nebraska resident business in the letting of a public contracts for road contract work or any public improvements work, or for supplies, construction, repairs and improvements except where it not permitted by Federal regulation or law (See Nebraska R.S., §73-101 exceptions to §73-101 in §73-106 below).

A resident bidder is any person, partnership, foreign or domestic limited liability company, association, or foreign or domestic corporation authorized to engage in business in the State of Nebraska and which has met the residency requirement of the state of the nonresident bidder necessary for receiving the benefit of that state's preference law.

Nebraska Revised Statutes, §73-106--School district construction, remodeling, or repair of building; exception to §73.101 above. Whenever any public school district in the state expends public funds for the construction, remodeling, or repair of any school-owned building or for site improvements, nothing in §73.101 applies when the contemplated expenditure for the complete project does not exceed $40,000.00. The section does not apply to the acquisition of existing buildings, purchase of new sites, or site expansions by the school district.

Nebraska Revised Statutes, §81-1276--The Existing Business Assistance Division may contract with any postsecondary institution of higher education, community organization, governmental agency or entity, or any other profit or nonprofit entity to provide specialized research, technology development assistance, technology transfer services, financial packaging or leveraging services, human resources development services, surety bond support, or such other specialized services as the division deems necessary if preference is given to entities based in or operating in Nebraska.

Nebraska Revised Statutes, §83-145--Tie-breaking preference for goods, farm-products and printing from the Nebraska Correctional Services. Goods received from divisions of corrections outside of Nebraska shall be of the same status and will be subject to the same restrictions and penalties as if they had been manufactured in the Nebraska Department of Correctional Services.

Nebraska Revised Statutes, §83-152--Goods made by confined persons; reciprocity. Goods produced in whole or in part by persons confined outside Nebraska may be transported and sold in Nebraska in the same manner as goods produced by persons committed to the state corrections department in Nebraska.

Nebraska Revised Statutes, §82-323--The Nebraska Arts Council shall give a preference to regional artists in its selection of and commissioning of artists.

Nebraska Revised Statutes §48-1503--Governmental subdivisions may negotiate directly with sheltered workshops (defined below) for products and services.

Nebraska Revised Statutes, §14-564--City Councils may negotiate directly with sheltered workshops (defined below) for supplies.

Nebraska Revised Statutes, Chapter 48, §1501--Sheltered workshop, defined. Sheltered workshop shall mean a facility in Nebraska operated by a public agency or a private nonprofit corporation providing employment to physically or mentally disabled clients in a program of rehabilitation, certified in compliance with the Fair Labor Standards Amendments of 1966, Public Law No. 89-601, 80 Stat. 830.

Nebraska Administrative Code, Title 9, Chapter 4, §003--Tie bid preference for Nebraska bidder. Reciprocal preference for Nebraska bidders equal to the preference given or required by the state of the non-resident bidder.

Nebraska Administrative Code, Title 199, Chapter 2, §002--In scrap tires cleanup and recycling, the director shall give preference to projects which utilize scrap tires generated and used in Nebraska.

Nebraska Administrative Code, Title 192, Chapter 1, §005.05--Commission for the Blind will give preference to comparable goods and services that can be procured from Nebraska service providers and businesses. Use of out-of-state vendors is limited to situations in which an out-of-state vendor is geographically closer to the recipient, the good or service is not available in-state, or the total cost to the program for the good or service is substantially less considering the actual and related cost of the good or service.

NEVADA:

Nevada Revised Statutes, Title 27, §333.300--Preference in tie bids to Nevada businesses for the purchase of supplies, materials and equipment; preference in tie bids with nonresident bidders awarded to bidder who will furnish goods or commodities produced or manufactured in the State of Nevada, or to the bidder who will furnish goods or commodities supplied by a dealer in the State of Nevada.

Nevada Revised Statutes, Title 27, §333.336--Preference imposed on non-resident bidders by increasing the non-resident's bid or proposal equivalent to the preference the state of which the bidder is a resident denies to bidders or contractors who are residents of Nevada.

Nevada Revised Statutes, Title 27, §333.375--The Purchasing Division may award a contract for services or commodities without accepting competitive bids to certain Nevada organizations or agencies described in chapter 435 of NRS whose primary purpose is the training and employment of persons with a mental or physical disabilities.

Nevada Revised Statutes, Title 27, §333.410--Preference is awarded to state institutions who use the labor of inmates to supply commodities or services.

Nevada Revised Statutes, Title 27, §333.4606--Preference to a bidder who manufactures a product in Nevada in which at least 50 % of the weight of the product is post-consumer waste (a finished material which

would normally be disposed of as a solid waste having completed its life cycle as a consumer item) whose price is not more than 10% higher.

Nevada Revised Statutes, Title 27, §333.410--Tie breaking preference so far as practicable, for quotations secured from institutions of the state whenever commodities or services are of kinds that are prepared through the labor of inmates.

NEW HAMPSHIRE:

New Hampshire Revised Statutes, Title I, §21-I: 19--Preference, at fair market price, for products manufactured by persons with disabilities and services rendered by persons with disabilities by any charitable nonprofit agency for the disabled, which is incorporated under the laws of New Hampshire.

NEW JERSEY:

New Jersey Statutes Annotated, §30:6-15.1--Preference in granting permits to operate vending facilities in State Buildings given to blind persons who have lived in New Jersey at least one year and are under the supervision and control of the said New Jersey Commission for the Blind.

New Jersey Statutes Annotated, §52:32-1.4 --Reciprocal preference in favor of New Jersey resident bidders awarded in contracts for goods and services.

New Jersey Administrative Code, §17:12-2.13--Reciprocal preference in favor of a New Jersey resident bidder is applied in the evaluation of bids. Reciprocal preference may be waived for (1) procurements supported by Federal funds where Federal rules prohibit the use of residential preferences; (2) if it would result in an award to a vendor which has a poor record of complaints; (3) when a public exigency requires the immediate delivery of articles or performance of the service; and (4) if when after price and other factors are considered, an award is considered to be "most advantageous" to the State of New Jersey.

New Jersey Administrative Code, §17:12-2.13--Reciprocal preference in favor of a New Jersey resident bidder is applied in the evaluation of bids. Reciprocal preference may be waived for (1) procurements supported by Federal funds where Federal rules prohibit the use of residential preferences; (2) if it would result in an award to a vendor which has a poor record of complaints; (3) when a public exigency requires the immediate delivery of articles or performance of the service; and (4) if when after price and other factors are considered, an award is considered to be "most advantageous" to the State of New Jersey.

NEW MEXICO:

New Mexico Statutes Annotated, §13-1-21--Other than for the purchase of school buses or when the expenditure of federal funds is involved for a bid price greater than $5,000,000.00 the following preferences apply: (note in the calculations that New Mexico prefers local manufacturers over local businesses.)

When bids are received only from nonresident businesses and resident businesses and the lowest responsible bid is from a nonresident business, the contract shall be awarded to the resident business whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident bidder is made lower than the bid price of the nonresident business when multiplied by a factor of .95.

When bids are received only from nonresident businesses and resident manufacturers and the lowest responsible bid is from a nonresident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident manufacturer is made lower than the bid price of the nonresident business when multiplied by a factor of .95.

When bids are received from resident manufacturers, resident businesses and nonresident businesses and the lowest responsible bid is from a resident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low resident business bidder if the bid price of the resident manufacturer is made lower than the bid price of the resident business when multiplied by a factor of .95.

When bids are received from resident manufacturers, resident businesses and nonresident businesses and the lowest responsible bid is from a nonresident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident manufacturer is evaluated as lower than the bid price of the nonresident business when multiplied by a factor of .95. If there is no resident manufacturer eligible for award under this provision, then the contract shall be awarded to the resident business whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident business is made lower than the bid price of the nonresident business when multiplied by a factor of .95.

When bids are received for both recycled content goods and virgin content goods and the lowest responsible bid is for virgin content goods, the contract shall be awarded to:

(1) a resident manufacturer offering the lowest bid on recycled content goods of equal quality if the bid price of the resident manufacturer when multiplied by a factor of .90 is made lower than the otherwise low virgin content goods bid price;

(2) a resident business offering a bid on recycled content goods of equal quality if:

(a) the bid price of no resident manufacturer following application of the preference allowed in Paragraph (1) of this subsection can be made sufficiently low; and

(b) the lowest bid price of the resident business when multiplied by a factor of .90 is made lower than the otherwise low virgin content goods bid price; or

(3) a nonresident business or nonresident manufacturer offering recycled content goods of equal quality if:

(a) the bid price of no resident business or resident manufacturer following application of the preference allowed in Paragraph (1) or (2) of this subsection can be made sufficiently low; and

(b) the lowest bid price of a nonresident offering recycled content goods when multiplied by a factor of .95 is made lower than the otherwise low virgin content bid price.

I. When bids are received for both recycled content goods and virgin content goods and the lowest responsible bid is for recycled content goods offered by a nonresident business or nonresident manufacturer, the contract shall be awarded to:

(1) a resident manufacturer offering the lowest bid on recycled content goods of equal quality if the bid price of the resident manufacturer when multiplied by a factor of .95 is made lower than the otherwise low recycled content goods bid price; or

(2) a resident business offering a bid on recycled content goods of equal quality if:

(a) the bid price of no resident manufacturer following application of the preference allowed in Paragraph (1) of this subsection can be made sufficiently low; and

(b) the lowest bid price of the resident business when multiplied by a factor of .95 is made lower than the otherwise low recycled content goods bid price offered by a nonresident business or manufacturer.

When bids are received for both recycled content goods and virgin content goods and the lowest responsible bid is for recycled content goods offered by a resident business, the contract shall be awarded to a resident manufacturer offering the lowest bid on recycled content goods of equal quality if the bid price of the resident manufacturer when multiplied by a factor of .95 is made lower than the otherwise low recycled content goods bid price.

This section shall not apply when the expenditure of federal funds designated for a specific purchase is involved or for any bid price greater than $5,000,000.00.

The provisions of this section shall not apply to the purchase of buses from a resident manufacturer or a New Mexico resident business that manufactures buses in New Mexico.

"Resident business" means a New Mexico resident business or a New York State business enterprise.

"New Mexico resident business" means a business that is authorized to do and is doing business under the laws of the State of New Mexico that (1) maintains its principal place of business in the State of New Mexico; (2) has staffed an office and has paid applicable state taxes for two years prior to awarding of the bid; and (3) is an affiliate of a business that meets the requirements of (1) and (2). "Affiliate" means and entity that directly or indirectly through one or more intermediate controls, is controlled by or is under common control with the qualifying business through ownership of voting securities representing a majority of the total voting power of the entity.

"New York State business enterprise" means a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods or commodities that are substantially manufactured, produced or assembled in New York state, or services, other than construction services, that are substantially performed within New York state.

New Mexico Statutes Annotated, §13-1-189--Preference to purchase personal property and services from New Mexico correction industries if the bid price is not higher than comparable items of tangible personal property or services.

New Mexico Statutes Annotated, §13-4-1--Whenever practicable award is to be made to a resident contractor for public works contracts or for the repair, reconstruction, including highway reconstruction, demolition or alteration thereof.

New Mexico Statutes Annotated, §13-4-2--When bids are received for public works contacts from nonresident contractors and resident contractors and the lowest responsible bid is from a nonresident contractor, the contract shall be awarded to the resident contractor whose bid is nearest to the bid price of the otherwise low nonresident contractor if the bid price of the resident contractor is made lower than the bid price of the nonresident contractor when multiplied by a factor of .95.

New Mexico Statutes Annotated, §13-4-5--Preference to be given to materials produced, grown, processed or manufactured in New Mexico by citizens or residents of New Mexico or provided or offered by a New York State business enterprise in contracting for materials to be used in the construction or maintenance of public works.

New Mexico Statutes Annotated, §13-4-7--Preference to use New Mexico timber in the construction or repair work of public buildings.

New Mexico Statutes Annotated, §63-9F-6--Preference of 5% added to the total weight awarded to any business that qualifies as a resident business for a telecommunications relay system that will enable impaired individuals to communicate with unimpaired individuals.

NEW YORK:

Consolidated Law of New York, State Finance Law, Article IX, §139-g--State agencies that have let two million dollars in service and construction contracts in a prior fiscal year are to give priority to purchases from small businesses and certified women and minority owned. Small business means a business which is resident in the State of New York, independently owned and operated, not dominant in its field and employs one hundred or less persons (See State Finance Law, Article IX, §135-a).

Consolidated Law of New York, State Finance Law, Article XI, §162--Preferred source status is accorded to the following entities:

Commodities produced by the Department of Correctional Services' Correctional Industries Program (CORCRAFT).

Commodities and services produced by any qualified, charitable, nonprofit making agency for the blind approved by the Commissioner of the Office of Temporary and Disability Assistance.

Commodities and services produced by any qualified charitable nonprofit making agency for other severely disabled persons.

Commodities and services produced by any special employment program serving mentally ill persons, operated by facilities within the Office of Mental Health and approved by the Commissioner of Mental Health.

Commodities and services produced by a qualified veterans' workshop providing job and employment skill training to veterans, operated by the United States Department of Veterans Affairs, that manufactures products or performs services within the State and is approved by the Commissioner of Education.

Commodities and services produced by any qualified charitable nonprofit making workshop for veterans approved for such purposes.

Products of qualified apparel manufacturer and contractor on the special September eleventh bidder's registry. (note: Chapter 350 of the Laws of N.Y. defines requirements for listing on this registry.)

Consolidated Law of New York, State Finance Law, Article XI, §165--Preference of 10 % for recycled products (a product manufactured from secondary materials). Preference of 15 % for products in which 50% of the secondary materials utilized in the manufacture of the product are generated from the waste stream in New York State. "Secondary materials" means any material recovered from or otherwise destined for the waste stream, including, but not limited to post-consumer material, industrial scrap material and overstock or obsolete inventories from distributors, wholesalers and other companies. It does not include by-products generated from and commonly reused within an original manufacturing process.

New York State labeled wines are provided with favored source status for the purposes of procurement. Procurement of New York State labeled wines is exempt from the competitive procurement statutes. "New York State labeled wine" means wine made from grapes, at least 75% the volume of which were grown in New York State.

Preference in the letting of contracts for food products grown, produced or harvested in the State of New York on behalf of facilities and institutions of the State of New York, who are authorized to purchase products locally. The Commissioner of General Services assisted by the Commissioner of Agriculture and Markets determine the percentage of each food product or class that must meet the requirements.

Office of General Services may deny to non-resident vendors placement on bidders mailing lists and award of contracts for products and services that they would otherwise obtain if their principal place of business is located in a state that penalizes New York state vendors, and if the goods or services offered will be substantially produced or performed outside New York State.

New York State business enterprise, includes a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, commodities which are substantially manufactured, produced or assembled in New York State, or services, other than construction services, which are substantially performed within New York State. For purposes of construction services, a New York State business enterprise means a business enterprise, including a sole proprietorship, partnership, or corporation that has its principal place of business in New York State.

New York, Appendix A, Standard Contract Clause 21--Reciprocity and Sanctions Provisions. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

NORTH CAROLINA:

General Statutes of North Carolina, §111-41--Preference to N.C. blind persons in operation of vending facilities on state property.

General Statutes of North Carolina, §111-48--Preference to N. C. blind persons in operation of highway vending facilities.

General Statutes of North Carolina, §143-59--Preference in tie bids for foods, supplies, materials, equipment, printing or services manufactured or produced in North Carolina or furnished by or through citizens of North Carolina.

Reciprocal Preference: on all contracts for equipment, materials, supplies, and services valued over $25,000, a percentage of increase shall be added to a bid of a nonresident bidder that is equal to the percentage of increase, if any, that the state in which the bidder is a resident adds to bids from bidders who do not reside in that state.

General Statutes of North Carolina, §148-70--Preference for purchasing articles, products and commodities which are manufactured or produced by North Carolina's Department of Corrections prison system.

NORTH DAKOTA:

North Dakota Century Code, §25-16.2--Preference given to non-profit, N.D. work centers for the chronically mentally ill for purchase of highway grade stakes.

North Dakota Century Code, §43-07-20--Except for contracts which involve federal-aid funds and when a preference or discrimination would be contrary to a federal law or regulation, contracts for construction, repair, or maintenance work shall provide that the contractor give preference to the employment of bona fide North Dakota residents, as determined by §54-01-26, with preference given first to honorably discharged disabled veterans and veterans of the armed forces of the United States, as defined in §37-19.1-01, who are deemed to be qualified in the performance of that work. The preference shall not apply to engineering, superintendence, management, or office or clerical work.

North Dakota Century Code, §44-08-01--Reciprocal preference awarded in favor of North Dakota business for the purchase of any goods, merchandise, supplies, equipment, and contracting to build or repair any building, structure, road, or other real property.

North Dakota Century Code, §44-08-02--Resident North Dakota bidder, seller, and contractor defined. The term "a resident North Dakota bidder, seller, or contractor" when used in §44-08-01, is one who has maintained a bona fide place of business within this state for at least one year prior to the date on which a contract was awarded.

North Dakota Century Code, §46-02-15--Preference when practicable for all public printing, binding and blank book manufacturing, blanks, and other printed stationery, to be done in North Dakota.

North Dakota Century Code, §48-02-10--Preference in tie bids to purchase materials manufactured or produced within North Dakota, and second, to purchase such as have been manufactured or produced in part in North Dakota for making alterations, repairs, additions, or erecting new public buildings.

North Dakota Century Code, §48-02-10.2--Preference in tie bids for furnishing materials, products and supplies which are found, produced, or manufactured within North Dakota from native natural resources.

North Dakota Administrative Code, §89-07-02-26--Preference given to North Dakota bidders for weather modification operations contracts.

North Dakota Administrative Code, §4-12-11-02--Reciprocal preference for North Dakota vendors equal to the preference given or required by the state of the nonresident bidder.

OHIO:

Ohio Revised Code Annotated, Title 1, §125.09--Preference for United States and Ohio products. Vendors from border states who do not impose greater restrictions on Ohio bidders are treated as Ohio bidders. Also, bidders with a significant Ohio economic presence shall qualify for award of a contract on the same basis as if their products were produced in the State of Ohio.

Ohio Revised Code Annotated, Title 1, §125.11--Department of Administrative Services, prior to awarding a contract, will first remove from bids goods or supplies that are not produced or mined in the United States. From among the remaining bids, preference to be given to bidders with goods or supplies produced or mined in Ohio.

Ohio Revised Code Annotated, Title 1, §125.56--All printing to be executed within Ohio except for printing contracts requiring special, security paper. Preference given to Ohio bidders in printing contracts requiring special, security paper as long as the price is not a price that exceeds by more than 5% the lowest price submitted on a non-Ohio bid.

Ohio Revised Code Annotated, Title 1, §153.012--Reciprocal preference in favor of contractors who have their principal place of business in Ohio, for construction, public improvement, including highway improvement, contracts.

Ohio Administrative Code, Chapter §123:5--Domestic Ohio Bid preference with respect to supply and service contracts, other than construction contracts. A preference is awarded to an Ohio bid as long as the price does not exceed by more than 5% the lowest price submitted on a non-Ohio bid. Ohio bid" means a bid received from a bidder offering Ohio products or a bidder demonstrating significant Ohio economic presence. *(§123:5-1-01 Definitions*)

Preference is awarded to Ohio bids or bidders who are located in a border state, provided that the border state does not impose a greater restriction than contained in the Ohio Revised Code, §125.09 and §125.11. "Border state" means any state that is contiguous to Ohio and that does not impose a restriction greater than Ohio imposes pursuant to §125.09 of the Revised Code. *(§123:5-1-01 Definitions*)

OKLAHOMA:

Oklahoma Statutes, Title 19, Chapter 17, §788(c)--Tie breaking preference given to materials produced in Oklahoma and construction contractors domiciled in, having and maintaining offices in, and being citizen taxpayers of, the State of Oklahoma.

Oklahoma Statutes, Title 61, §6--preference is given to materials mined, quarried, manufactured or procured within the State of Oklahoma, provided that the same can be procured at no greater expense than like material or materials of equal quality from outside of the state.

Oklahoma Statutes, Title 61, §9--All contracts that expend state funds for construction or repair of state institutions shall require employment of Oklahoma labor and the use of Oklahoma materials if available.

Oklahoma Statutes, Title 61, §10--All contracts that expend state funds for construction shall give a tie breaking preference to bidders who employ Oklahoma labor and the use Oklahoma materials.

Oklahoma Statutes, Title 61, §14--A contractor domiciled outside the boundaries of Oklahoma shall be required, in order to be successful, to submit a bid the same percent less than the lowest bid submitted by a responsible contractor domiciled in Oklahoma as would be required for such an Oklahoma domiciled contractor to succeed over the bidding contractor domiciled outside Oklahoma on a like contract being let in his domiciliary state.

Oklahoma Statutes, Title 74, §85.17a--State agencies to apply reciprocal preference against the bidding preference of other states or nations that is applied in favor of bidders domiciled in their jurisdictions for acquisitions.

Oklahoma Statutes, Title 74, §85.45c--A bid is awarded to minority business enterprises if the bid is lower 5% added to the otherwise lowest responsive bid, if the amount of funds expended on state contracts awarded to minority business enterprises is less than the 10% goal of funds expended on state contracts awarded to minority businesses. **Note: This statute was held unconstitutional by Kornhaas Const., Inc. v. Oklahoma Dept. of Central Services**

Oklahoma Statutes Title 7, Chapter 4, §73--Preference and free Space to blind operators licensed and established by the Oklahoma State Department of Rehabilitation Services, for the operation of vending facilities in state and county buildings.

OREGON:

Oregon Revised Statutes, Title 26, §279A.120--Preference for goods or services manufactured or produced in the Oregon if price, fitness, availability and quality are otherwise equal. Reciprocal preference in favor of Oregon businesses for public contracts. Add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in the state in which the bidder resides. A resident bidder is a bidder who has paid unemployment taxes or income taxes in the State of Oregon for one year immediately preceding submission of the bid.

Oregon Revised Statutes, Title 26, §282.210--All printing, binding and stationery work for the state and political subdivisions to be performed in the State of Oregon.

Oregon Revised Statutes, Title 30, §346.220--Preference for products of visually impaired in state purchases.

Oregon Administrative Rules, §125-030-0070--Central Purchasing to add a percent increase on the Bid of a Nonresident Bidder equal to the percent, if any, of the preference given to the Bidder in the state in which the Bidder is a resident.

Oregon Administrative Rules, §125-085-0000--preference to nonprofit organizations which provide opportunity to persons with disabilities who reside in the State of Oregon to operate recycling programs to recycle products including: White ledger or bond paper; Stationery and letterheads; Plain bond machine copies; Computer printouts; Envelopes; Colored paper; Newspapers; Cardboard; Other acceptable products for collection may include but are not limited to, plastic, glass and metal, as determined for acceptability by the Department's recycling program.

Oregon Administrative Rules, §330-120-0010--Department of Energy will give tie-breaking preference to individuals residing in Oregon and businesses which have their home office or headquarters in Oregon in contract for services.

PENNSYLVANIA:

Pennsylvania Code, Title 339, Part II, Chapter 11, Article VIII, §11.8-815A--Pennsylvania cities and townships shall give (5%) percent local preference for resident businesses or products either manufactured in Allentown or manufactured by entities headquartered in Allentown, but the preference is not to exceed $2,500 in awarding bids. A Resident Business means one which maintains its principal place of business in the City of Allentown or maintains an office which employs at least five (5) employees in the City of Allentown.

Pennsylvania Consolidated Statutes, Title 62, Chapter 1, §103--Supplies means any property, including, but not limited to equipment, materials, printing, insurance and leases of installment purchases of tangible or intangible personal property. The term does not include real property, leases of real property or alcoholic beverages or liquor purchased for resale by the Pennsylvania Liquor Control Board.

Pennsylvania Consolidated Statutes, Title 62, Chapter 1, §107--Reciprocal preference is applied against a nonresident bidder in the purchase, invitation for bids, or request for proposals, for procurement of supplies exceeding $10,000 to those bidders offering supplies produced, manufactured, mined, brown, or performed in the State of Pennsylvania.

Reciprocal preference is applied against a nonresident bidder in the award of construction contracts, exceeding $10,000. (See 62 Pa.C.S. §514)

Resident bidder or offeror means a person, partnership, corporation or other business entity authorized to transact business in the State of Pennsylvania and having a bona fide establishment for transacting business in the State of Pennsylvania.

PUERTO RICO:

Laws of Puerto Rico Annotated, Title 3, Chapter 37, §914a--Preference for use and purchase of Puerto Rican products. Guarantee of an adequate representation of Puerto Rican products in every purchase made by the Government.

Laws of Puerto Rico Annotated, Title 3, Chapter 37, §914e--Fifteen percent (15%) preference given to merchandise, goods, supplies, materials and nonprofessional services produced, assembled or packed in Puerto Rico or distributed by agents established in Puerto Rico shall be acquired, provided they comply with the specifications, terms and conditions.

Laws of Puerto Rico Annotated, Title 12, Chapter 127A, §1320j-1--When acquiring products with recycled or non-recycled contents to be

used by the Commonwealth of Puerto Rico, each agency must purchase products containing recycled materials with preference to products recycled in Puerto Rico when the price is reasonably competitive and the quality is adequate for the projected use. For purposes of this section, "reasonably competitive" means a comparable product containing recycled material, with a price increase not greater than 15%. This increase in cost, or price preference, shall expire 10 years after the effective date of this act.

Laws of Puerto Rico Annotated, Title 12, Chapter 128C, §1335l--Government agencies or instrumentalities shall require the purchase of lubricating oil that contains the highest percentage of oil recycled or refined preferably in Puerto Rico unless said it increases cost by more than 10% or does not meet standards recommended by the manufacturer of the equipment that shall use the oil.

RHODE ISLAND:

General Laws of Rhode Island, §37-2.2-3--Preference for the state to purchase articles made or manufactured and services provided by persons with disabilities in nonprofit rehabilitation facilities, or in profit making facilities where 60% of the employees are disabled.

General Laws of Rhode Island, §37-2-8--Preference for Rhode Island state institutions are to purchase foodstuffs of good quality grown or produced in Rhode Island by Rhode Island farmers, at the prevailing market price, when they are available.

General Laws of Rhode Island, §37-2-59.1--Preference in tie bids for professional contracts entirely supported by state funds to be awarded to architectural, engineering, and consulting firms with their place of business located in Rhode Island. Second preference in tie bids awarded to architectural, engineering, and consulting firms who propose a joint venture with a Rhode Island firm.

SOUTH CAROLINA:

Code of Laws of South Carolina Annotated, Title 11, Article 5, §11-35-1520--In competitive sealed bidding involving contracts of $25,000 or more, preference is awarded in tie bids to a South Carolina firm that is tied with an out-of-state firm. Preference is also awarded to the bidder with products produced or manufactured in South Carolina who is tied with a bidder having items produced or manufactured out-of-state.

Code of Laws of South Carolina Annotated, Title 11, Article 5, §11-35-1524--Preference of 7% provided to residents of South Carolina or whose products are made, manufactured, or grown in South Carolina. An additional 3% preference is awarded to a bidder who is both a resident of South Carolina and whose products are made, manufactured, or grown in South Carolina.

Code of Laws of South Carolina Annotated, Title 12, Article 29, §12-28-2930--Set-asides of 5% of the total state source highway funds are to be expended through direct contracts for $250,000 or less to small business concerns owned and controlled by socially and economically disadvantaged ethnic minorities, and to firms owned and controlled by disadvantaged females.

Preference of 2.5% in contracts awarded pursuant to this section is given to South Carolina contractors in tie bids for highway, bridge, and building construction and building renovation contracts.

Code of Laws of South Carolina Annotated, Title 24, Article 3, §24-3-330--Preference for all offices, departments, institutions and agencies of South Carolina to purchase articles or products made or produced by convict labor in the State of South Carolina.

Code of Laws of South Caroline Annotated, Title 43, Chapter 26, §43-26-40--For operators of vending facilities in state buildings, preference given to "blind persons" who are eighteen years of age or older are residents of this South Carolina.

SOUTH DAKOTA:

South Dakota Codified Laws Annotated, §5-19-1--Preference for materials, products and supplies which are found, produced or manufactured within the State of South Dakota. (§5-20-7. Waives preference when products or services unavailable)

South Dakota Codified Laws Annotated, §5-19-1.2--Preference given to a person who operates a South Dakota grade A milk plant where milk and milk products are collected, handled, processed, stored, pasteurized, and packaged if his bid is equal to, or within five percent or less, of any other bidder.

South Dakota Codified Laws Annotated, §5-19-3--Reciprocal preference in favor of South Dakota businesses in contracts for public works or improvement, goods, merchandise, supplies, and equipment. Resident bidder is any person who has been a bona fide resident of the State of Dakota for one year or more immediately prior to bidding upon a contract. (S.D. Codified Laws, §5-19-4).

South Dakota Codified Laws Annotated, §5-19-5--A successful bidder may not subcontract more than 20% of the work to non-resident subcontractors if resident subcontractors are available at competitive prices.

South Dakota Codified Laws Annotated, §5-19-6--Preference for South Dakota laborers, workers, and mechanics on all work mentioned in §5-19-3 when possible. Preference for South Dakota materials and products of equal quality and desirability over materials and products produced outside of the state.

South Dakota Codified Laws Annotated, §5-20-2--Preference for the officials, boards and commissions and political subdivisions of the State of South Dakota to purchase goods and services, or custodial and maintenance services from qualified agencies. A "Qualified agency," is any public or private nonprofit corporation geographically located in the State of South Dakota that provides services to the handicapped and is certified to provide a regular program or work activity center by the Department of Human Services.

South Dakota Codified Laws Annotated, §5-23-2--Purchase, leasing, hiring, or leasing-purchase of motor vehicles shall only be from authorized dealers licensed by the State of South Dakota.

South Dakota Codified Laws Annotated, §5-23-12.2--Tie breaking preference given to South Dakota businesses or manufacturers over non resident bidders.

South Dakota Codified Laws Annotated, §5-23-13--Preference in tie bids to any person, firm, or corporation who has his or its principal place of business in the State of South Dakota and to goods manufactured in South Dakota.

South Dakota Codified Laws Annotated, §5-23-21.2--Reciprocal preference in favor of a resident bidder against a bidder from any state which enforces a preference for resident bidders is applied in state purchasing and printing contracts.

South Dakota Codified Laws Annotated, §41-20-10--Preference to native trees and tree seeds from South Dakota dealers.

South Dakota Codified Laws Annotated, §1-16B-42--When considering two or more applications for a loan for development projects which have been identified as creating equal amounts of employment and income, preference shall be given to projects processing raw materials produced in South Dakota.

TENNESSEE:

Tennessee Code Annotated, §12-3-809--Preference in tie bids for departments, agencies and institutions of the State of Tennessee to purchase meat, meat food products or meat by-products from in-state meat producers.

Tennessee Code Annotated, §12-3-810--Preference for public education institutions to purchase meat, meat food products or meat products from producers located within the State of Tennessee.

Tennessee Code Annotated, §12-3-811--All state agencies, departments, boards, commissions, institutions, institutions of higher education, schools and all other state entities to award a preference in tie bids to in-state coal mining companies.

Tennessee Code Annotated, §12-3-812--All state agencies, departments, boards, commissions, institutions, institutions of higher education, schools and all other state entities to award a preference in tie bids to in-state natural gas producers.

Tennessee Code Annotated, §12-4-121--Preference to goods, including agricultural products, produced or grown in Tennessee or offered by Tennessee bidders if the cost to the state and quality are equal. For Agricultural products not grown in Tennessee, agricultural products offered by Tennessee bidders shall be given preference, if cost to the state and quality are equal.

Tennessee Code Annotated, §12-4-802--Reciprocal preference allowed to residents of Tennessee, and residents of another state that do not have a preference in public construction contracts against another state that is contiguous to Tennessee and allows a preference to a resident contractor of that state.

Tennessee Code Annotated, §71-4-703 and §71-4-204--Preference to purchase all services or commodities that are available and certified by the Board of Standards from qualified nonprofit work centers for the blind or agencies serving individuals with severe disabilities.

Tennessee Administrative Rules--Purchasing of Materials, Supplies and Equipment, Chapter 0690-3-1-.08--Tie breaking preference given to in-state bidders.

TEXAS:

Texas Codes Annotated, Government Code, Title 2, §44.042--A school district shall give preference to those agricultural produced, processed, or grown in Texas if the cost and quality is equal. Similar preference given to Texas plants, and vegetation used for landscaping purposes.

"Agricultural products" include textiles and other similar products. "Processed" means canning, freezing, drying, juicing, preserving, or any other act that changes the form of a good from its natural state to another form.

Texas Codes Annotated, Government Code, Title 4, §466.106--Preference in tie bids for lottery equipment or supplies produced in the State of Texas or services or advertising offered by a bidder from the State of Texas. If bidders from the State of Texas are not equal in cost and quality, then lottery equipment or supplies produced in another state or services or advertising offered by a bidder from another state shall be given preference over foreign equipment, supplies, services, or advertising.

Texas Codes Annotated, Government Code, Title 4, §497.024 --Preference for state agencies to purchase Texas prison-made articles or products.

Texas Codes Annotated, Government Code, Title 10, §2155.441--Preference for products from workshops, organizations, or corporations whose primary purpose is training and employing individuals having mental retardation or a physical disability if they meet state specifications.

Texas Codes Annotated, Government Code, Title 10, §2155.443--Preference to bidders of rubberized asphalt paving made from scrap tires by a facility located in the State of Texas if the cost as determined by a life-cycle cost benefit analysis does not exceed by more than 15 % the bid cost of alternative paving materials.

Texas Codes Annotated, Government Code, Title 10, §2155.444--First preference is given in tie bids for goods and agricultural products produced or grown in Texas. Second tie bid preference given to agriculture products offered by Texas bidders that are of equal cost and quality to products from other states of the United States.

Next preference is given in tie bids for goods and agricultural products from other states of the United States over foreign goods and agricultural products that are of equal cost and quality.

Preference is also given to Texas vegetation native to the region in purchases for vegetation for landscaping purposes, including plants.

In the procurement of services, all state agencies shall give preference to a Texas bidder if the services meet state requirements on performance and quality and the cost does not exceed that of similar cost and services that are not offered by a Texas bidder.

Texas Codes Annotated, Government Code, Title 10, §2155.444--A state agency that contracts for services shall require the contractor, in performing the contract, to purchase products and materials produced in this state when they are available at a price and time comparable to products and materials produced outside this state.

Texas Codes Annotated, Government Code Annotated, Title 10, §2155.449--Preference in tie bids for products and services from an economically depressed or blighted area of Texas. The cost of the good or service cannot exceed the cost of other similar products or services that are not produced in an economically depressed or blighted area.

"Economically depressed or blighted area" is either an area that is defined by the Texas Government Code, §2306.004 as defined below, or meets the definition a historically underutilized business zone as defined by 15 U.S.C. §632(p) also defined below.

Texas Government Code, §2306.001 and 002 indicates that this section applies to blighted and depressed areas of Texas.

"Economically depressed or blighted area" means an area: (A) that is a qualified census tract as defined by §143(j), Internal Revenue Code of 1986 (26 U.S.C. §143(j)) or has been determined by the housing finance division to be an area of chronic economic distress under §143, Internal Revenue Code of 1986 (26 U.S.C. §143); (B) established in a municipality that has a substantial number of substandard, slum, deteriorated, or deteriorating structures and that suffers from a high relative rate of unemployment; or (C) that has been designated as a reinvestment zone under Chapter 311, Tax Code. (Texas Government Code, §2306.004)

Historically underutilized business zone. The term "historically underutilized business zone" means any area located within 1 or more: (A) qualified census tracts; (B) qualified nonmetropolitan counties; (C) lands within the external boundaries of an Indian reservation; or (D) redesignated areas. (15 U.S.C. 632(p))

Texas Codes Annotated, Government Code Annotated, Title 10, §2171.052--Preference given to resident entities of the State of Texas for contracts with travel agents.

Texas Codes Annotated, Government Code Annotated, Title 10, §2252.002--Reciprocal preference in favor of Texas businesses for all governmental contracts.

Texas Codes Annotated, Government Code, Chapter 2254.027--Preference given to Consultants with principle place of business in Texas if all else is equal.

Title 1, Texas Administrative Code, Chapter 113, §113.8--Tie bid preferences for Texas resident bidders and for bidders offering supplies, materials or equipment or agricultural products produced in Texas. A reciprocal preference is given to out of state bidders equal to the requirements given to Texas bidders or products in that state.

Texas Administrative Code, Title 16, Chapter 401--The Lottery Commission shall give preference to a Texas resident bidder or proposer and to the purchase or lease of goods produced in Texas if the cost to the state and quality being equal. Second preference given to goods or services produced in other states over foreign produced goods or services, cost and quality being equal.

Title 1, Texas Administrative Code, Chapter 303, §303.7--The Texas National Research Laboratory Commission procurements shall give the tie-bid preferences required in 1 TAC §113.8 above.

Title 3, Texas Codes Annotated, Higher Education, Chapter 51, §51.941--Institutions of higher education are to give preference to agricultural products grown, produced or processed in Texas if the cost to the institution and the quality of the products are equal to the cost and quality of other available products. Institutions of higher education are defined in §61.003.

Texas Statutes Annotated, Government Code Title 10, §2155.138--Competitive bidding does not apply to a state purchase of goods or services made or provided by blind or visually impaired persons or offered for sale to a state agency through efforts made under law by the Texas Council on purchasing from People with Disabilities as long as the good or services meet state specifications for quantity, quality, delivery, life cycle costs and cost no more than the fair market price of similar goods or services.

Texas Codes Annotated, Government Code, Chapter 2165, §2165.214--Preference in leasing space for a vending facility is given to an existing lessee if the lease has lasted over 10 years; if Chapter 94 is not applicable; and if there is a history of quality and reliable service under the existing lease.

Texas Codes Annotated, Transportation Code, §223.047--Preference to bidders of rubberized asphalt paving made from scrap tires by a facility located in the State of Texas if the cost as determined by a life-cycle cost benefit analysis does not exceed by more than 15 % the bid cost of alternative paving materials.

"Rubberized asphalt" means an asphalt material containing at least 15% by weight of a reacted whole scrap tire.

"Scrap tire" means a tire that can no longer be used for its original intended purpose.

UTAH:

Utah Code Annotated, §19-3-313--Reciprocal restrictions on the import of waste. Waste may not be transported into and transferred, stored, decayed in storage, treated, or disposed of in the state if the state of origin of the waste or the state in which the waste was generated prohibits or limits similar actions within its own boundaries.

Utah Code Annotated, §55-5-3--Preference to blind persons who have resided for at least one year in the state of Utah for a license to operate a vending stand or other enterprise.

Utah Code Annotated, §63-56-20.5--Reciprocal preference in favor of Utah businesses for goods, supplies, equipment, materials and printing.

Utah Code Annotated, §63-56-20.6--Reciprocal preference in favor of Utah contractors for construction contracts.

Utah Code Annotated, §63-56-35.6--Preference for state departments, agencies and institutions to procure goods and services produced by Utah Correctional Industries Division.

Utah Code Annotated, §63-56-35.8--Preference for procurements of products made in a sheltered workshop in Utah, if products meet needs and specifications, can be supplied within a reasonable amount of time, and price is within 5% of the lowest otherwise responsible bid. "Sheltered workshop" means a nonprofit organization operated in the interest of severely disabled individuals where at least 75% of the employees are severely disabled or is certified by the United States Department of Labor.

Utah Administrative Rules, Rule 33-3-113--Tie Bid preference given to a Utah resident bidder or to a Utah produced product.

Utah Administrative Rule 33-3-119--Preference without competitive bidding, to Governmental Produced Supplies or Services produced or performed incident to programs such as industries of correctional or other governmental institutions where available at a fair and reasonable price.

VERMONT:

Vermont Statutes Annotated, Title 6, Chapter 207, §4601--Tie break preference for agricultural products grown or produced in Vermont when available and when they meet quality standards established by the secretary of agriculture.

Vermont Statutes Annotated, Title 29, Part 2, Chapter 55, §1401--When purchasing fire and casualty insurance coverage for the benefit of the State of Vermont, preference is applied to Vermont-domiciled companies and independent agents licensed in and resident of Vermont when consistent as to coverage, service and the best interest of the State of Vermont.

Vermont Statutes Annotated, Title 29, Part 1, Chapter 5, §160b--The division for the blind and visually impaired is encouraged to sell milk and milk products, with a preference for the sale of Vermont-produced milk whenever feasible, in vending machines at rest areas and information centers in this state according to policies and rules established by the commissioner of buildings and general services.

VIRGINIA:

Code of Virginia Annotated, §51.5-84--Preference given blind persons who are residents of Virginia for licenses to operate vending facilities.

Code of Virginia Annotated, §2.2-4344--Non-competitive preference given to goods or services that are produced or performed by persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; or nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped.

Code of Virginia Annotated, §2.2-4324--In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.

Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a

like preference may be allowed to the lowest responsible bidder who is a resident of Virginia.

Code of Virginia Annotated, §2.2-4325--In determining the award of any contract for coal to be purchased for use in state facilities with state funds, the Department of General Services shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than 4% greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.

Code of Virginia Annotated, §2.2-4328--The governing body of a county, city or town may, in the case of a tie bid, give preference to goods, services and construction produced in the locality or provided by persons, firms or corporations having principal places of business in the locality, if such a choice is available; otherwise the tie shall be decided by lot, unless §2.2-4324 applies.

Code of Virginia Annotated, §2.2-1117--Purchases from the Department for the blind and vision impaired. Unless exempted by the Division, all services, articles and commodities that are (i) required for purchase by the Division or by any person authorized to make purchases on behalf of the Commonwealth and its departments, agencies and institutions; (ii) performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; (iii) available for sale by such Department; and (iv) conform to the standards established by the Division shall be purchased from such Department at the fair market price without competitive procurement.

Code of Virginia Annotated, §2.2-1118--Preference for items or service which may be obtained from sheltered workshop under the supervision of the Virginia Department for the Blind and Vision Impaired or by inmates confined in state correctional institutions. Items or service included on the list may be purchased without competitive procurement, if the items and services (i) can be purchased within 10% of their fair market value, (ii) will be of acceptable quality, and (iii) can be produced in sufficient quantities within the time required.

Code of Virginia Annotated, §53.1-47 and §53.1-133.8--Preference for Articles and services produced or manufactured by persons confined in state correctional facilities or by the jail industry programs.

Virginia Administrative Code, 11 VAC 5-20-430--Tie bid preference to proposals, goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations.

Virginia Administrative Code, 3VAC5-70-160--No more than 25% of the fruits, fruit juices or other agricultural products used by the farm winery licensee shall be grown or produced outside of Virginia, except upon permission of the board. This 25% limitation applies to the total production of the farm winery. (A farm winery license limits retail sales to the premises of the winery and to two additional retail establishments.)

VIRGIN ISLANDS:

Virgin Island Code, Title 31, Chapter 23, §236a--Preference for construction services, supplies, materials, equipment, and contractual or consulting services from suppliers in the Virgin Islands where the total cost is not more than fifteen percent (15%) higher than non Virgin Island suppliers and the quality and availability are substantially equivalent.

Virgin Island supplier is (1) a person who has been a bona fide continuous resident of the United States Virgin Islands for at least 8 years or was born in the United States Virgin Islands; or (2) a firm, partnership or corporation in which at least fifty-one (51%) percent of the legal or equitable ownership is held by a person or persons who have been bona fide continuous residents of the United States Virgin Islands for at least 8 years or who were born in the United States Virgin Islands and (3) who is licensed in and maintains his or its principal place of business in the United States Virgin Islands and who owns, operates, or maintains a store, warehouse, or other place of business in the United States Virgin Islands or is the duly authorized agent, dealer, distributor or representative in the United States Virgin Islands for the materials, supplies, articles, or equipment or contractual or consulting services of the general character described by the specifications and required under a contract. In addition, a preferred bidder with respect to locally available agricultural products or bottled water shall utilize only locally produced agricultural products and bottled water in meeting the requirements of the bid.

WASHINGTON:

Revised Code of Washington, §15.36.131--Sale of out-of-state grade A milk and milk products. Grade A milk and milk products from outside the state may not be sold in the state of Washington unless produced and/or pasteurized under provisions equivalent to the requirements of the state of Washington.

Revised Code of Washington, §39.23.020--Municipalities may give non-competitive preference for products and services manufactured or provided by sheltered workshops and programs of the Washington department of social and health services as long as the offer is at fair market price.

Revised Code of Washington, §43.19.520--Preference to purchase products and services from community rehabilitation programs of the department of social and health services for the disabled and disadvantaged or from certain businesses owned and operated by persons with disabilities.

Revised Code of Washington, §43.19.530--Non-competitive preference products and/or services manufactured or provided by community rehabilitation programs of the Washington department of social and health services; and (Until December 31, 2007) businesses owned and operated by persons with disabilities as long as it does not exceed fair market price.

Revised Code of Washington, §43.19.534--A preference is given to goods that are produced or provided in whole or in part from work programs operated by the Washington department of corrections unless (1) The department of general administration finds that the articles or products do not meet the reasonable requirements of the agency or department, (2) are not of equal or better quality, or (3) the price of the product or service is higher than that produced by the private sector.

The criteria contained in (1), (2), and (3) do not apply to goods and services obtained from outside the state.

Revised Code of Washington, §43.19.535--Preference to bidder providing goods or services to a state agency if goods or services are provided in whole or in part by an inmate work program of the department of corrections; and an amount at least 15% of the total bid amount will be paid by the bidder to inmates as wages.

Revised Code of Washington, §43.78.130--All printing, binding, and stationery work done for any state agency, county, city, town, port district, or school district in this state shall be done within Washington as long as it is available in state and the charge is no higher than customarily charged to private customers.

Revised Code of Washington, §72.60.160--Preference by any state agency or political subdivision of the state given to all articles, materials, and supplies authorized to be produced or manufactured in correctional institutions.

Revised Code of Washington, §43.19.700 and §43.19.704--Reciprocal preference in favor of Washington businesses against bidders from states giving in-state preference.

Revised Code of Washington, §43.19.706--Purchase of Washington agricultural products. The state purchasing and material control director shall encourage each state and local agency doing business with the department to purchase Washington fruit, vegetables, and agricultural products when available.

Revised Code of Washington, §43.19.1911(7)--In determining the lowest responsible bidder, the agency shall consider any preferences provided by law to Washington products and vendors and to RCW 43.19.704 providing reciprocal preferences.

Washington Administrative Code, Chapter 43, §43.78.130--Preference will be given to Native American artists in projects involving their culture.

Washington Administrative Code, Chapter 67, §67-35-010--blind persons participating in the Washington State vending facility program are given preference in the operation of vending facilities on federal, state, county, municipal, and other local governmental property.

Washington Administrative Code, Chapter 137 §137-80-040--any state agency, political subdivision of the state will give preference to those articles, materials, and supplies produced or manufactured by Washington correctional institutional industries.

Washington Administrative Code, Chapter 236, §236-48-085--Reciprocal preference. In procuring goods and services, an appropriate percentage penalty will be added to an out-of-state bid by the Office of State Procurement, if the bidder's state has in-state preference clauses. States with only reciprocity will not be included.

Washington Administrative Code, Chapter 236, §236-49-055--Preference for correctional industries Class II products. State Correctional industries and the department of general administration will create a list of goods and services available from the corrections industries and create a mandatory contract giving preference to those items and services.

Washington Administrative Code, Chapter 236, §236-48-096--Preference to goods from Washington Class II correctional industries.

WEST VIRGINIA:

West Virginia Code Annotated, §5A-3-37--A preference is given to resident bidders for construction contracts over $50,000 whose employees are at least 75 % West Virginia residents for two years or, nonresident vendors who employ at least 100 residents and have at least 75 % resident employees who have lived in West Virginia continuously for at least two years, as long as their bid does not exceed the lowest qualified bid by 2 1/2 %.

A "resident bidder" means an individual who has resided in West Virginia continuously for four years, or a partnership, association, corporation resident vendor, or a corporate nonresident vendor that has an affiliate or subsidiary that employs a minimum of 100 state residents and which has maintained its headquarters or principal place of business within West Virginia. An otherwise qualified partnership without four years residence will qualify if 80% of the partners qualify as residents.

West Virginia Code Annotated, §5A-3-37a--Reciprocal preference in the purchase of commodities or printing except where the provisions of §5A-3-37 may apply.

West Virginia Code Annotated, §18B-5-4 (9)(c)--Preference for resident bidders in the purchase or acquisition of materials, supplies, equipment and printing by institutions of higher education.

West Virginia, Code of State Rules, Title 10, Series 12C, §110-12C-2.14.1-.4--Resident vendor" means a vendor who is registered in accordance with article 12, chapter 11 of the Code to transact business within the State of West Virginia. Maintains its headquarters or principal place of business in the State; Has actually paid, and not just applied to pay, personal property taxes imposed by Chapter 11 of the Code on equipment used in the regular course of supplying services or commodities of the general type offered; Has actually paid, and not just applied to pay, all required business taxes imposed by Chapter 11 of the Code.

West Virginia, Code of State Rules, Title 10, Series 12C, §110-12C-3 and §110-12C-4--Construction Services, Commodities and Printing. A two and one-half percent (2.5%) preference to an individual resident vendor who has resided in West Virginia continuously for four (4) years immediately preceding the bid, or a partnership, association or corporation resident vendor which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years to the bid. The entity submitting a bid must actually be performing the services required.

A partnership, association or corporation shall be deemed to meet the four (4) year continuous residency requirement if at least eighty percent (80%) of the ownership interest of such resident vendor is held by another individual, partnership, association or corporation resident vendor who otherwise meets the four (4) year continuous residency requirement.

A two and one-half percent (2.5%) preference to a bid from a vendor which certifies that on an average at least sixty percent (60%) of the employees working on the project will have been residents of West Virginia continuously for the two (2) years immediately the bid. Bidders shall be responsible for ensuring subcontractor compliance with the sixty percent (60%) requirement.

A qualified bid may receive a five percent (5%) preference if the vendor submitting that bid meets both requirements of the foregoing subsections.

West Virginia Code of State Rules, Title 148, Series 1, §6.4.4--Department of Administration. All purchases of commodities and printing made upon competitive bids, with the exception of construction services, are subject to a resident vendor preference in accordance with the rules promulgated by the Secretary of the Department of Tax and Revenue (above).

All purchases of commodities and printing made upon competitive bid are subject to reciprocity preference equal to the amount of preference applied or granted by another State.

WISCONSIN:

Wisconsin Statutes, §16.71--State agencies may purchase products of and goods for resale by Wisconsin prison industries, other than printing or stationery, without inviting bids and without accepting the lowest responsible bid.

Wisconsin Statutes, §16.752--Mandatory preference to commodities produced at an institution of the state for severely handicapped individuals if the commodity conforms to the specifications on the list, the ordering agency shall purchase the commodity from the institution.

Wisconsin Statutes, §16.75--Reciprocal preference awarded to Wisconsin producers, distributors, suppliers and retailers, in the purchase of materials, supplies, equipment, and contractual services over non Wisconsin bidders who are from a state that grants a resident preference. Purchases of products or goods from Wisconsin's prison industries, other than printing or stationery, are not subject to the competitive bidding process. The department shall attempt to ensure that 5% of its expenditures are to minority owned businesses as long as the bid is not

more than 5% higher than the apparent low bid and shall maximize the use of Wisconsin minority businesses.

Wisconsin Statutes, §16.855--Reciprocal preference to resident bidders in construction projects where the cost exceeds $30,000 is applied against bidders from states that impose a resident preference. In awarding construction contracts the department shall attempt to ensure that 5% of the total amount expended in each fiscal year is awarded to contractors and subcontractors which are Wisconsin minority businesses, as defined under §16.75(3m)(a). The department may award any contract to a minority business that submits a qualified responsible bid that is no more than 5% higher than the apparent low bid.

Wisconsin Statutes, §35.012--Laws and public documents shall be printed in this state except statutes and annotations of the 2nd class, yearbooks and other similar student publications not funded by student fees or student organization income, printing of the 5th and 7th classes and such copyrighted or patented or printing specialties not available for production within this state.

Wisconsin Statutes, §44.57--Preference to resident artists for works of art in state buildings.

Wisconsin Administrative Code, Chapter AB 4, §4.05--Tie breaking preference to Wisconsin artists when selecting artists to provide original works of visual art for buildings constructed by the state.

Wisconsin Administrative Code, §8.03(1)--The award of a contract for a procurement shall be made to the lowest responsible bidder, taking into account qualified bids from sheltered workshops, small businesses, and minority businesses.

(4) Tie bids--Wisconsin suppliers are preferred over out-of-state suppliers in tie bids.

WYOMING:

Wyoming Statutes Annotated, §9-2-1016(b)(iv)(G)--Preference given to a private sector bidder over a non-private sector bidder in awarding bids or contracts for supplies or services when competitive sealed bidding is required as long as the private sector bidder's bid is not more than 5% higher than that of the lowest responsible non-private sector bidder.

Wyoming Statutes Annotated, §16-6-102 and Wyoming Rules & Regulations, Chapter 6, §1--Preference given to a certified resident bidder in public works contracts for the erection, construction, alteration or repair of any public building, or other public structure, or for making any addition thereto, or for any public work or improvement if such bid is not more than 5% higher than that of the lowest responsible non-resident bidder and provided that articles bid are not of inferior quality to those offered by competitors outside the state.

Wyoming Statutes Annotated, §16-6-104--Preference for resident Wyoming laborers, workmen and mechanics for all work enumerated in §16-6-102 above whenever possible. Wyoming materials and products of equal quality and desirability shall have preference over materials or products produced outside the state.

Wyoming Statutes Annotated, §16-6-103--A successful resident bidder cannot subcontract more than 20% of the work covered by his contract to nonresident contractors. A resident bidder cannot contract more than 20% of the work covered by his contract to a nonresident contractor.

Wyoming Statutes Annotated, §16-6-105--Preference in public purchases for Wyoming materials, supplies, agricultural products, equipment and machinery manufactured or grown in the State of Wyoming as long as the price is not more than 5% higher than that of the lowest responsible non-resident bidder and provided that articles bid are not of inferior quality to those offered by competitors outside the state.

"Agricultural product" means any horticultural, viticultural, vegetable product, livestock, livestock product, bees or honey, poultry or poultry product, sheep or wool product, timber or timber product.

Wyoming Statutes Annotated, §16-6-107--All public buildings, courthouses, public school buildings, public monuments and other public structures constructed in this state shall be constructed and maintained by materials produced or manufactured in Wyoming if Wyoming materials are suitable and can be furnished in marketable quantities. Preference shall not be granted for materials of an inferior quality to those offered by competitors outside of the state, but a differential of not to exceed 5% may be allowed in cost of Wyoming materials of equal quality as against materials from states having or enforcing a preference rule against "out-of-state" products.

Wyoming Statutes Annotated, §16-6-203--Any public works project or improvement for the state or any political subdivision, municipal corporation, or other governmental unit constructing, reconstructing, improving, enlarging, altering or repairing, shall employ only Wyoming laborers. Every contract shall require that Wyoming labor be used unless Wyoming laborers are not available or are not qualified to perform the work.

Wyoming Statutes Annotated, §16-6-301 and Wyoming Rules & Regulations, Chapter 6, §2--Preference given to resident bidders in public printing contracts if the resident's bid is not more than 10% higher than that of the lowest responsible nonresident bidder. The successful resident bidder shall perform at least 75% of the contract within the state of Wyoming.

Wyoming Statutes Annotated , §16-6-803 and Wyoming Rules & Regulations, Chapter 1, §4--Preference is given to Wyoming artists for works of art in the public buildings of the State of Wyoming.

Wyoming Rules & Regulations, Chapter 14, §6--A preference is awarded to Wyoming contractors for any contractual service if the resident's bid is not more than 5% higher than that of the lowest responsible non-resident bidder. Resident laborers, workmen and mechanics are to be used whenever possible, provided that Wyoming materials and products of equal quality and desirability are given preference over materials or products produced outside the State of Wyoming.

For questions concerning the Bidder Preference List, please contact the Office of General Counsel at (512) 463-4257.

TRD-200502617
D. Kent Hardin
Legal Counsel
Texas Building and Procurement Commission
Filed: June 24, 2005

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 17, 2005, through June 23, 2005. As required by federal law, the public is given an opportunity

to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on June 29, 2005. The public comment period for these projects will close at 5:00 p.m. on July 29, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Leroy Stanely; Location: The project is located within Old River, adjacent to the San Jacinto River, at 17818 Riverside Drive, south of Interstate 10, in Channelview, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Highlands, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 299678; Northing: 3297288. Project Description: The applicant proposes to construct a barge fleeting facility along approximately 650 feet of shoreline. The project involves 4.0 acres of dredging Old River, including 1.6 acres of wetlands, to -14 feet MLT and the discharge of fill material into a 0.3-acre existing slip. The disposal area will be located in the existing slip and in an upland location adjacent to the project site. The applicant proposes to compensate for impacts to 1.6 acres of wetlands and 2.1 acres of shallow open water by creating 3.6 acres of wetlands and 0.4 acre of intertidal channels at an existing wetland mitigation site under Permit 19284. CCC Project No.: 05-0321-F1; Type of Application: U.S.A.C.E. permit application #23418 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: BOSS Exploration & Production Corporation; Location: The project is located in State Tracts (ST's) 348, 349, 350, 390, 391, 392, 395, 396, 397, and 415 in Corpus Christi Bay. The project can be located on the U.S.G.S. quadrangle maps entitled: Port Ingleside, Texas and Port Aransas, Texas. Approximate UTM Coordinates of center of tracts in NAD 27 (meters): Zone 14; Easting: 680950; Northing: 3077920. Project Description: The applicant requests re-authorization of an Oil Field Development Blanket Permit No. 12769 that expired December 31, 1993. The original permit provided authorization to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities in Corpus Christi Bay, ST's 348, 349 and 392, Nueces County, Texas. Amendment (01) authorized an extension of time until December 31, 1983. The permit was transferred to C. C. Operating Company on December 16, 1987. Amendment (02) provided authorization to retain an unauthorized channel, perform mitigation work, and to extend the time until December 21, 1990. Amendment (03) provided authorization to change the completion date for the mitigation work. The permit was transferred to Redfish Bay Operating Company on October 12, 1989. Amendment (04) provided authorization to perform a dredging operation and to maintain an oil well access channel in ST 349. Amendment (05) was withdrawn on September 24, 1990. Amendment (06) authorized an extension of time to complete work until December 31, 1993 and authorized the addition of ST's 350, 395, 396, 397, and 415 to the permit area. Amendment (07) was withdrawn on April 8, 1996. The applicant proposes to retain the same ST's authorized in previous amendments, and conduct the same type of work associated with oil and gas production, which may include the installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. Additionally, the applicant proposes to add ST's 391 and 392 to the permit area. CCC Project No.: 05-0328-F1; Type of Application: U.S.A.C.E. permit application #12769(08) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: BOSS Exploration & Production Corporation; Location: The project is located in Matagorda Bay inside State Tract (ST) 178, approximately south and west of Palacios, in Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Carancahua Pass, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 762196; Northing: 3163238. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities for the drilling of ST 178 No. 1 Well. Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. CCC Project No.: 05-0334-F1; Type of Application: U.S.A.C.E. permit application #23787 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Neumin Production Company; Location: The project is located in Lavaca Bay, in State Tract (ST) 10, Well No. 2, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Lavaca East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 735785; Northing: 3168071. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling, production and transportation activities for the proposed ST-10 Well No. 2. The applicant proposes to drill for petroleum resources and install a 4-inch O.D. pipeline approximately 14,635 feet in length. The pipelines will be jetted or plowed a minimum of 3 feet below the bay bottom. Approximately 3,252 cubic yards of sand, silt, and clay will be displaced during pipeline construction. The trench is expected to fill in naturally. CCC Project No.: 05-0343-F1; Type of Application: U.S.A.C.E. permit application #23809 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Davis Petroleum Company; Location: The project is located in the Shore Acres area near the Bayport Channel in Galveston Bay, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Baycliff, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Tie-in point at shoreline (provided by Port of Houston Authority): Easting: 307740; Northing: 3276444. Tie-in point to existing Davis Petroleum 8-inch pipeline: Easting: 308861; Northing: 3276190. Project Description: Davis Petroleum Corporation requests authorization to reroute their existing 8-inch pipeline in State Tracts 216 and 255, in Galveston Bay, Chambers County, Texas. The Port Authority has requested this reroute to make room for future channel construction activities. The proposed route would begin at the shoreline coordinate (shown above) provided by the Port Authority. The proposed pipeline would then go in an easterly direction approximately 3,790 feet to a tie-in point on an existing 8-inch pipeline. The remaining section of the existing pipeline would be removed. CCC Project No.: 05-0344-F1; Type of Application: U.S.A.C.E. permit application #23823 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200502682
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: June 29, 2005

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003, 303.005, and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 07/04/05 - 07/10/05 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 07/04/05 - 07/10/05 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Sec. 303.005[3] for the period of 07/01/05 - 07/31/05 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Sec. 303.005 for the period of 07/01/05 - 07/31/05 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

TRD-200502647
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 27, 2005

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Court of Criminal Appeals

Availability of Grant Funds

The Court of Criminal Appeals announces the availability of funds to be provided in the form of grants to entities for the purpose of providing continuing legal education courses, programs, and technical assistance projects for; prosecutors, prosecutor office personnel, criminal defense attorneys who regularly represent indigent defendants in criminal matters, and judges, clerks, and other court personnel of the appellate courts, district courts, county courts at law, county courts, justice courts and municipal courts of this State. Funds are subject to the provisions of Chapter 56 of the Texas Government Code and the General Appropriations Bill (HB1) 79th Reg.Leg.Session. The grant period is September 1, 2005 through August 31, 2006 The deadline for applications is July 27, 2005. Applicants may request an application packet by phone, mail, or in person. The phone number is (512) 475-2312, and the address is: Court of Criminal Appeals, Judicial Education Program, 201 W. 14th Street, Austin, TX 78701.

The Court of Criminal Appeals also announces the availability of $150,000 in funding to be provided in the form of grants to entities for the purpose of providing continuing legal education courses, programs, and technical assistance projects on actual innocence for; criminal defense attorneys, prosecuting attorneys, and judges. Funds are subject to the provisions of Chapter 56 of the Texas Government Code and the General Appropriations Bill (HB1) 79th Reg.Leg.Session, Article IV, rider 8. The grant period is September 1, 2005 through August 31, 2006. The deadline for applications is July 27, 2005. Applicants may request an application packet by phone, mail, or in person. The phone number is (512) 475-2312, and the address is: Court of Criminal Appeals, Judicial Education Program, 201 W. 14th Street, Austin, TX 78701.

TRD-200502603
Troy Bennett
Clerk
Court of Criminal Appeals
Filed: June 23, 2005

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Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding FKD Enterprises, Inc. dba Lucky Seven Food Mart, Docket No. 2002-1035-PST-E on June 17, 2005 assessing $12,150 in administrative penalties with $8,550 deferred.

Information concerning any aspect of this order may be obtained by contacting Barbara Klein, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding C.R. Ashmore Family Partnership, Ltd. dba Opies Barbeque, Docket No. 2003-0686-PWS-E on June 17, 2005 assessing $11,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sarah Utley, Staff Attorney at (512) 239-0575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHANI CORPORATION, Docket No. 2003-0991-PST-E on June 17, 2005 assessing $1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nadir Ali dba Get & Go Food Mart 4, Docket No. 2004-0162-PST-E on June 17, 2005 assessing $16,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Naurin, Inc. dba Shell III, Docket No. 2004-0432-PST-E on June 17, 2005 assessing $1,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Chris Friesenhahn, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Muhammad S. Javaid, Docket No. 2004-0375-PST-E on June 17, 2005 assessing $8,480 in administrative penalties with $1,696 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tri Star Aviation, Inc., Docket No. 2004-0590-PST-E on June 17, 2005 assessing $2,340 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Watson, Staff Attorney at (512) 239-2044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bishnu Shiwakoti dba Shiwakoti's Grocery, Docket No. 2004-0707-PST-E on June 17, 2005 assessing $2,700 in administrative penalties with $540 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwestern Industrial Contractors and Riggers, Inc., Docket No. 2004-0857-PST-E on June 17, 2005 assessing $1,800 in administrative penalties with $360 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator at (806) 468-0512, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Naurin, Inc. dba Shell III, Docket No. 2004-0922-PST-E on June 17, 2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at (817) 588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Choice Petroleum, Inc. dba DJ's Country Store #2, Docket No. 2004-1058-PST-E on June 17, 2005 assessing $2,180 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator at (806) 468-0512, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sampri Investments, LLC dba Sammys 3, Docket No. 2004-1108-PST-E on June 17, 2005 assessing $2,460 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at (512) 239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maknojia and Maknojia, Inc. dba Sam's Drive Inn #3, Docket No. 2004-1148-PST-E on June 17, 2005 assessing $2,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mex-Pak-U.S.A., Inc. dba Shop and Save Food Store, Docket No. 2004-1174-PST-E on June 17, 2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Chris Friesenhahn, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Edcouch-Elsa Independent School District Public Facility Corporation, Docket No. 2004-1231-PST-E on June 17, 2005 assessing $1,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Susan Longenecker, Enforcement Coordinator at (512) 239-0968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Herbert E. Brite dba K Q General Store, Docket No. 2004-1242-PST-E on June 17, 2005 assessing $950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512) 239-7037, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enedina Garza dba G & S Mart, Docket No. 2004-1298-PST-E on June 17, 2005 assessing $800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Watson, Staff Attorney at (512) 239-2044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Canh M. Nguyen dba Mobil Mart Inc., Docket No. 2004-1299-PST-E on June 17, 2005 assessing $800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2004-1340-PST-E on June 17, 2005 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James A. Ince dba Diamond Jims, Docket No. 2004-1349-PST-E on June 23, 2005 assessing $1,800 in administrative penalties with $360 deferred.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at (512) 239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Andrew Enterprise, Inc. dba Audrey Chevron, Docket No. 2004-1382-PST-E on June 17, 2005 assessing $10,200 in administrative penalties with $2,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mehindi Fatehal Ajani dba Circle A Food Store, Docket No. 2004-1388-PST-E on June 17, 2005 assessing $3,210 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SR-KRUPA, Inc. dba SR Food & Gas, Docket No. 2004-1413-PST-E on June 17, 2005 assessing $1,350 in administrative penalties with $270 deferred.

Information concerning any aspect of this order may be obtained by contacting Susan Longenecker, Enforcement Coordinator at (512) 239-0968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texarkana Water Utilities dba Texarkana Wastewater Treatment Facility, Docket No. 2004-1434-PST-E on June 17, 2005 assessing $1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Judy Davis dba Judy's Kountry Kitchen, Docket No. 2004-1480-PST-E on June 17, 2005 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-5111, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lighthouse Electric Cooperative, Inc., Docket No. 2004-1541-PST-E on June 17, 2005 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dong Shin dba Coastal Gas Mart Richey Road, Docket No. 2004-1545-PST-E on June 17, 2005 assessing $2,910 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding In Sook Jung dba Highland Mobil, Docket No. 2004-1546-PST-E on June 17, 2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Highway Travel Centers, Inc. dba Highway Travel Center, Docket No. 2004-1551-PST-E on June 17, 2005 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cecil Wayne Meadlin dba Meadlin Service Center, Docket No. 2004-1568-PST-E on June 17, 2005 assessing $3,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Namj C, Inc. dba M & S Express, Docket No. 2004-1576-PST-E on June 17, 2005 assessing $6,100 in administrative penalties with $1,220 deferred.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jaime Ramirez dba A's Food Store, Docket No. 2004-1614-PST-E on June 17, 2005 assessing $2,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Angleton ISD, Docket No. 2004-1618-PST-E on June 17, 2005 assessing $2,460 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Benavides ISD, Docket No. 2004-1623-PST-E on June 17, 2005 assessing $1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cari Bing, Enforcement Coordinator at (512) 239-1445, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nooruddin Dhanani dba Nice N Easy Food Store, Docket No. 2004-1630-PST-E on June 17, 2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandy Van Cleave, Enforcement Coordinator at (512) 239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding L C Franklin, Inc. dba Hitching Post, Docket No. 2004-1632-PST-E on June 23, 2005 assessing $5,040 in administrative penalties with $1,008 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy Van Cleave, Enforcement Coordinator at (512) 239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jayesh I. Patel dba Spring Creek Trading Post, Docket No. 2004-1656-PST-E on June 17, 2005 assessing $800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Momin & Sons Incorporated dba Hearne Food Store, Docket No. 2004-1658-PST-E on June 17, 2005 assessing $2,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Byron Harris dba Fast Stop Grocery, Docket No. 2004-1665-PST-E on June 17, 2005 assessing $1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jeffy's, Inc. dba Jeffys Exxon Mobil 2, Docket No. 2004-1676-PST-E on June 17, 2005 assessing $1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at (512) 239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J&L Automotive, Inc. dba Midway Shamrock, Docket No. 2004-1682-PST-E on June 17, 2005 assessing $950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at (512) 239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Talley Trucking Company, Inc., Docket No. 2004-1687-PST-E on June 17, 2005 assessing $800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Erika Fair, Enforcement Coordinator at (512) 239-6673, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mona Enterprises, Inc. dba Shop In Market, Docket No. 2004-1735-PST-E on June 17, 2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sidheshwar Singh dba Fairmont Food Mart, Docket No. 2004-1747-PST-E on June 17, 2005 assessing $1,680 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rogelio Ramirez dba Pepe's Drive In No. 2, Docket No. 2004-1761-PST-E on June 17, 2005 assessing $2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator at (512) 239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R D Wallace Oil Co., Inc. dba Wallace Oil Co., Docket No. 2004-1767-PST-E on June 17, 2005 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Akber Ali Virani dba Airwood Grocery, Docket No. 2004-1777-PST-E on June 17, 2005 assessing $1,640 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shbaita, Inc. dba Super Stop 4, Docket No. 2004-1782-PST-E on June 17, 2005 assessing $3,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harold McGehee dba Harold's Foods, Docket No. 2004-1788-PST-E on June 17, 2005 assessing $1,800 in administrative penalties with $360 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ram Diversified, Inc. dba Copperfield Texaco, Docket No. 2004-1802-PST-E on June 17, 2005 assessing $1,940 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hong & Taft, Inc. dba H & T Texaco, Docket No. 2004-1826-PST-E on June 17, 2005 assessing $2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Peter S. Kim dba EZ Stop N Go, Docket No. 2004-1834-PST-E on June 17, 2005 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TammyMalik Enterprises, Inc. dba Poolville One Stop, Docket No. 2004-1837-PST-E on June 17, 2005 assessing $800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator at (512) 239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Liem T. Quan dba Happy 7 11, Docket No. 2004-1838-PST-E on June 17, 2005 assessing $3,210 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator at (512) 239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maso, Inc. dba Chill City Conoco, Docket No. 2004-1841-PST-E on June 17, 2005 assessing $1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator at (512) 239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Usama Siddiqui dba Qavis, Docket No. 2004-1851-PST-E on June 17, 2005 assessing $3,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (713) 767-3500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ali Mohammad Munaf dba Brownies Mini Mart, Docket No. 2004-1892-PST-E on June 17, 2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at (512) 239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joey Sulak dba Riverside Drive In, Docket No. 2004-1910-PST-E on June 17, 2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Roger Beasley Imports, Inc. dba Mazda South, Docket No. 2004-1913-PST-E on June 17, 2005 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bodin Concrete, L.P. dba Bodin Concrete Co., Docket No. 2004-1921-PST-E on June 17, 2005 assessing $2,400 in administrative penalties with $480 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HSY, Inc. dba Beltline Mobil, Docket No. 2004-1922-PST-E on June 17, 2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tab Lonestar Holding, Inc. dba Super Stop 14, Docket No. 2004-1923-PST-E on June 17, 2005 assessing $950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lazaro Juarez dba Downtown Fuel Service Car Wash, Docket No. 2004-1973-PST-E on June 17, 2005 assessing $1,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Gainesville, Docket No. 2004-2004-PST-E on June 17, 2005 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Domingo Escobedo dba Excobedo Exxon, Docket No. 2004-2008-PST-E on June 17, 2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pravina Solanki dba Redland Grocery FFP 559, Docket No. 2004-2051-PST-E on June 17, 2005 assessing $2,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shreehari Krupa Corporation dba BP Foodmart, Docket No. 2004-2066-PST-E on June 17, 2005 assessing $2,550 in administrative penalties with $510 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari Bing, Enforcement Coordinator at (512) 239-1445, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Balques, Inc. dba Sunshine Food 2, Docket No. 2005-0102-PST-E on June 17, 2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Metro Business, Inc. dba Metro Mart 9, Docket No. 2005-0140-PST-E on June 17, 2005 assessing $2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator at (512) 239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tash, Inc. dba In-N-Out Mini Mart, Docket No. 2005-0243-PST-E on June 17, 2005 assessing $2,100 in administrative penalties with $420 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200502663
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 28, 2005

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Notice of District Petition

Notices mailed June 23, 2005.

TCEQ Docket No. 2005-0638-DIS; The Texas Commission on Environmental Quality (TCEQ) will conduct a hearing on an application for dissolution (Application) of Montgomery County Municipal Utility District No. 69 (District). The Application was filed with the TCEQ and includes a petition by LGI Land, LLC, as landowner; Woodforest National Bank, as first lienholder; and Vision Mortgage, Inc., as second lienholder (Applicants), being owners of property located within the District. The TCEQ will conduct this hearing under the authority of Chapter 49 and Chapter 54 of the Texas Water Code, Title 30, Chapter 293 of the Texas Administrative Code and the procedural rules of the TCEQ. The TCEQ will conduct the hearing at 9:30 a.m., Wednesday, September 14, 2005, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. The District was created by Acts 1985, 69 Legislature, Chapter 855 (Senate Bill 1356) on June 15, 1985. The District operates under Texas Water Code Chapter 49 and Chapter 54 as a municipal utility district. The petition filed with the Application states that dissolution is desirable or necessary because the District is not required for the development of land within its boundaries. The petition filed with the Application states that the District: (1) has performed none of the functions for which it was created for five consecutive years preceding the date of the Application, (2) is financially dormant, and (3) has no outstanding bonded indebtedness. An affidavit from the State Comptroller of Public Accounts has been included in the Application, certifying that the District has no bonded indebtedness. If the request for dissolution is approved, the District's assets, if any, will escheat to the State of Texas and will be administered by the State Comptroller of Public Accounts and disposed of in the manner provided by Chapter 74 of the Texas Property Code. The TCEQ may grant a contested case hearing on this Application if a written hearing request is filed within 30 days after the newspaper publication of this notice.

TCEQ Docket No. 2005-0639-DIS; The TCEQ will conduct a hearing on an application for dissolution (Application) of Montgomery County Municipal Utility District No. 73 (District). The Application was filed with the TCEQ and includes a petition by LGI Land, LLC, as landowner; Woodforest National Bank, as first lienholder; and Vision Mortgage, Inc., as second lienholder (Applicants), being owners of property located within the District. The TCEQ will conduct this hearing under the authority of Chapter 49 and Chapter 54 of the Texas Water Code, Title 30, Chapter 293 of the Texas Administrative Code and the procedural rules of the TCEQ. The TCEQ will conduct the hearing at 9:30 a.m., Wednesday, September 14, 2005, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. The District was created by Acts 1985, 69 Legislature, Chapter 859 (Senate Bill 1360) on June 15, 1985. The District operates under Texas Water Code Chapter 49 and Chapter 54 as a municipal utility district. The petition filed with the Application states that dissolution is desirable or necessary because the District is not required for the development of land within its boundaries. The petition filed with the Application states that the District: (1) has performed none of the functions for which it was created for five consecutive years preceding the date of the Application, (2) is financially dormant, and (3) has no outstanding bonded indebtedness. An affidavit from the State Comptroller of Public Accounts has been included in the Application, certifying that the District has no bonded indebtedness. If the request for dissolution is approved, the District's assets, if any, will escheat to the State of Texas and will be administered by the State Comptroller of Public Accounts and disposed of in the manner provided by Chapter 74 of the Texas Property Code. The TCEQ may grant a contested case hearing on this Application if a written hearing request is filed within 30 days after the newspaper publication of this notice.

TCEQ Docket No. 2005-0640-DIS; The TCEQ will conduct a hearing on an application for dissolution (Application) of Montgomery County Municipal Utility District No. 74 (District). The Application was filed with the TCEQ and includes a petition by LGI Land, LLC, as landowner; Woodforest National Bank, as first lienholder; and Vision Mortgage, Inc., as second lienholder (Applicants), being owners of property located within the District. The TCEQ will conduct this hearing under the authority of Chapter 49 and Chapter 54 of the Texas Water Code, Title 30, Chapter 293 of the Texas Administrative Code and the procedural rules of the TCEQ. The TCEQ will conduct the hearing at 9:30 a.m., Wednesday, September 14, 2005, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. The District was created by Acts 1985, 69 Legislature, Chapter 860 (Senate Bill 1361) on June 15, 1985. The District operates under Texas Water Code Chapter 49 and Chapter 54 as a municipal utility district. The petition filed with the Application states that dissolution is desirable or necessary because the District is not required for the development of land within its boundaries. The petition filed with the Application states that the District: (1) has performed none of the functions for which it was created for five consecutive years preceding the date of the Application, (2) is financially dormant, and (3) has no outstanding bonded indebtedness. An affidavit from the State Comptroller of Public Accounts has been included in the Application, certifying that the District has no bonded indebtedness. If the request for dissolution is approved, the District's assets, if any, will escheat to the State of Texas and will be administered by the State Comptroller of Public Accounts and disposed of in the manner provided by Chapter 74 of the Texas Property Code. The TCEQ may grant a contested case hearing on this Application if a written hearing request is filed within 30 days after the newspaper publication of this notice.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a

way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200502640

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 27, 2005

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 8, 2005**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 8, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Norberto Reyes; DOCKET NUMBER: 2004-1126-MSW-E; TCEQ ID NUMBER: 455150090; LOCATION: one mile east of the intersection of an unnamed road and the southernmost point of Flor de Mayo Road, Brownsville, Cameron County, Texas; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.5(a), by causing, suffering, allowing, and/or permitting the unauthorized disposal of municipal solid waste; PENALTY: $2,100; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Royce Ebner dba Guy's Dance Hall; DOCKET NUMBER: 2004-0023-PWS-E; TCEQ ID NUMBERS: 2490065 and RN103007605; LOCATION: 730 Public Road 4628, Briar, Wise County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.42(e)(2) and (3) and §290.110(b)(4) and (d)(3)(C), by failing to provide mechanical chlorination equipment to provide continuous disinfected water, by failing to maintain the residual disinfectant concentration in the far reaches of the distribution system at a minimum of 0.2 milligrams per liter (mg/L) free chlorine, and by failing to provide a chlorine test kit which uses the Diethyl-P-Phenylenadiamine (DPD) method; 30 TAC §290.121(a) and (b), by failing to maintain and provide a chemical and microbiological monitoring plan to include bacteriological analysis and chlorine residual readings; Texas Health and Safety Code (THSC), §341.035 and 30 TAC §290.39(h)(1) and (m) and §290.41(c)(3)(A), by failing to notify the executive director of a new system, by failing to obtain written approval of plans and specifications before construction of a new public water supply system, and by failing to furnish copies of well completion data that included the following items: a driller's log, a copy of the sanitary control easement, a cementing certificate, the results of a 36-hour pump test, and an original or legible copy of a United States Geological Survey; 30 TAC §290.46(v), by failing to install all water system electrical wiring in a securely mounted conduit in compliance with a local or national electrical code; 30 TAC §§290.41(c), 290.44(h)(1)(A), and 290.41(c)(3)(B), (J), (K), and (M) - (P), by failing to ensure sanitary conditions and surroundings at the well site, by failing to prohibit water connections to establishments where an actual or potential contamination or system hazard exists without an air gap separation or an approved backflow prevention assembly between the regulated entity and the source of contamination, by failing to provide a well casing that extends a minimum of 18 inches above the elevation of the finished floor of the pump room or natural ground surface, and by failing to provide a concrete sealing block, a screened casing vent, a suitable sampling cock (tap) on the well, a flow meter on the discharge line of the well, an intruder-resistant fence around the well, and an all-weather access road to the well site; 30 TAC §290.46(h), by failing to maintain on hand a supply of calcium hypochlorite disinfectant for use when making repairs to the water system; THSC, §341.0315(c) and 30 TAC §290.45(d)(2)(A), by failing to provide a minimum pressure tank capacity of 220 gallons; 30 TAC §290.46(f) and §290.42(k) (now §290.42(1)), by failing to compile and maintain monthly operating reports and a plant operations manual; 30 TAC §290.44(a)(4), by failing to install water transmission and distribution lines according to the manufacturer's instructions and below the frost line and no less than 24 inches below the ground surface; PENALTY: $1,750; STAFF ATTORNEY: Barbara J. Watson, Litigation Division, MC 175, (512) 239-2044; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200502657

Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 28, 2005

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 8, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 8, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Marathon Ashland Petroleum LLC and BP Amoco Chemical Company; DOCKET NUMBER: 2005-0354-IHW-E; TCEQ ID NUMBER: RN102953379; LOCATION: 1027 6th Avenue, Texas City, Galveston County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: TWC, §26.121, by discharging other waste into, or adjacent to, any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state; and 30 TAC §335.4, by causing, suffering, allowing, or permitting the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner so as to cause the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste into, or adjacent to, the waters in the state without obtaining specific authorization for such a discharge; PENALTY: $0; Order amending Agreed Order, In the Matter of Amoco Chemical Company, Plant A, SWR No. 32297, Issued November 24, 1993; STAFF ATTORNEY: Mary Clair Lyons, Litigation Division, MC 175, (512) 239-6996; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Paul Kim dba Southpark Super Stop; DOCKET NUMBER: 2004-2075-PST-E; TCEQ ID NUMBERS: 7348 and RN102447901; LOCATION: 2120 East Southeast Loop 323, Tyler, Smith County, Texas; TYPE OF FACILITY: convenience store with the retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by an accidental release arising from operation of the petroleum underground storage tanks; PENALTY: $3,150; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3) COMPANY: Sun Valley Distribution, Inc.; DOCKET NUMBER: 2004-1218-AIR-E; TCEQ ID NUMBERS: EE11170 and RN100813229; LOCATION: 11345 Pellicano Drive, El Paso, El Paso County; TYPE OF FACILITY: food products store; RULES VIOLATED: 30 TAC §115.252(2) and Texas Health and Safety Code, §382.085(b), by allowing, from a storage vessel, the transfer of gasoline which might ultimately be used in a motor vehicle in the El Paso area, with a Reid vapor pressure greater than 7.0 pounds per square inch; PENALTY: $900; STAFF ATTORNEY: Sarah Utley, Litigation Division, MC 175, (512) 239-0575; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

TRD-200502656
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 28, 2005

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Notice of Opportunity to Participate in Permitting Matters

A person may request to be added to a mailing list for public notices processed through the Office of the Chief Clerk for air, water, and waste permitting activities at the Texas Commission on Environmental Quality (TCEQ). You may request to be added to: (1) a permanent mailing list for a specific applicant name and permit number; and/or (2) a permanent mailing list for a specific county or counties.

Note that a request to be added to a mailing list for a specific county will result in notification of all permitting matters affecting that particular county.

To be added to a mailing list, send us your name and address, clearly specifying which mailing list(s) to which you wish to be added. Your written request should be sent to the TCEQ, Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087.

Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-200502642
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 27, 2005

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Notice of Water Quality Applications

The following notices were issued during the period of June 15, 2005 through June 16, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087,

WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

523 VENTURE, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014576001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located is located 1.3 miles south and 0.7 mile east of the intersection of U.S. Highway 290 and Becker Road in Harris County, Texas.

AMERIPOL SYNPOL CORPORATION which operates a styrene rubber manufacturing polymer facility, has applied for a renewal of TPDES Permit No. WQ0000817000, which authorizes the discharge of stormwater on an intermittent and flow variable basis via Outfalls 001, 002, and 003. The facility is located at 2000 East Pool Road, approximately 500 feet south of the intersection of Grandview Avenue and Interstate Highway 20, in the City of Odessa, Ector County, Texas.

CITY OF BOVINA has applied for a major amendment to Permit No. 10213-001, to authorize a change in the effluent disposal method from surface irrigation to disposal via evaporation from the stabilization/evaporation ponds and the playa lake. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day via irrigation of 22 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located at 501 East Street, east of 1st Street, north of State Highway 86 and on the west side of the closed City of Bovina landfill in the City of Bovina in Parmer County, Texas.

CITY OF CLUTE has applied for a major amendment to TPDES Permit No. 10044-001 to remove effluent limitations and monitoring requirements for total copper and total zinc. The application also includes a request for a temporary variance to the existing water quality standard for dissolved oxygen for the Flag Lake Drainage Canal. The variance would authorize a three-year period for the applicant to conduct a water quality study of the Flag Lake Drainage Canal. The study would show whether a site-specific amendment to water quality standard is justified. Prior to the expiration of the three-year variance period, the Commission will consider the site-specific standard and determine whether to adopt the standard or require the existing water quality standard to remain in effect. The facility is located approximately 800 feet east of the intersection of Lake Jackson Road and State Highway 288 on the north side of the Missouri Pacific Railroad in the City of Clute in Brazoria County, Texas.

GREENS BAYOU ASSEMBLY OF GOD CHURCH has applied for a new permit, proposed TPDES Permit No. WQ0014608001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility will be located 700 feet east of Beltway 8 and 900 feet north of North Lake Houston Parkway in Harris County, Texas.

GULF MARINE FABRICATORS has applied for a renewal of TPDES Permit No. 12064-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located on the east side of Farm-to-Market Road 2725, approximately 0.5 mile southeast of the intersection of State Highway 361 and Farm-to-Market Road 2725 in San Patricio County, Texas.

LAKE MUNICIPAL UTILITY DISTRICT has applied for a new permit, proposed TPDES Permit No. WQ0014598001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 188,000 gallons per day. The facility will be located approximately 6,700 feet west of Thompson Road fronting on the north access road of Interstate Highway 10 in Harris County, Texas.

THE LOWER COLORADO RIVER AUTHORITY AND THE BRAZOS RIVER AUTHORITY have applied for a major amendment to TPDES Permit No. 10264-002 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 11,800,000 gallons per day to an annual average flow not to exceed 21,500,000 gallons per day. The applicant has also applied to the TCEQ for approval of a substantial modification to its pretreatment program under the TPDES program. The facility is located at 3939 Palm Valley Boulevard, adjacent to and south of State Highway 79, approximately 4 miles east of the intersection of State Highway 79 and Interstate Highway 35 in Williamson County, Texas.

CITY OF MCALLEN has applied for a renewal of TPDES Permit No. WQ0010633003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 10,000,000 gallons per day. The facility is located at 4100 Idela, McAllen, Texas, approximately 1.5 miles west of Spur Highway 115 and approximately 2.5 miles southwest of the intersection of U.S. Highway 83 and Spur Highway 115 in the City of McAllen in Hidalgo County, Texas.

MEADOWHILL REGIONAL MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TPDES Permit No. WQ0011215001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 1,200,000 gallons per day to an annual average flow not to exceed 2,400,000 gallons per day. The facility is located at 23102 Roseville Drive, approximately two miles west of the intersection of Interstate Highway 45 and Farm-to-Market Road 2920 in Harris County, Texas.

CITY OF PREMONT has applied for a major amendment to Permit No. 10253-001, to replace the existing wastewater treatment facility with a new facility at an adjacent location. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 430,000 gallons per day via surface irrigation of 150 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located on County Road 418, approximately 1.9 miles south and 1.5 miles east of the intersection of Farm-to-Market Road 716 and U.S. Highway 281 in Jim Wells County, Texas.

RIO GRANDE VALLEY SUGAR GROWERS, INC. which operates a raw sugar and molasses production facility, has applied for a renewal of TPDES Permit No. WQ0001752000, which authorizes the discharge of process wastewater, domestic wastewater, and storm water at a daily average flow not to exceed 289,000 gallons per day via Outfall 001. The facility is located three miles west of the community of Santa Rosa on State Highway 107, Hidalgo County, Texas.

CITY OF ROMA has applied for a renewal of TPDES Permit No. 11212-003, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 450,000 gallons per day. The facility is located approximately 1,300 feet northwest of the intersection of U.S. Highway 83 and U.S. Customs Toll Bridge Road (in the City of Roma), and approximately 1,100 feet north of the intersection of the same U.S. Customs Toll Bridge Road and the border of Mexico in Starr County, Texas.

CITY OF RUNGE has applied for a renewal of Permit No. 10266-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 110,000 gallons per day via irrigation of 42 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 2,300 feet south and 1,600 feet east of the intersection of U.S. Highway 81 and U.S. Highway 72 in the City of Runge in Karnes County, Texas.

UNION WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 14313-001, which authorizes the discharge

of treated domestic wastewater at a daily average flow not to exceed 774,000 gallons per day. The facility is located on Farm-to-Market Road 1430, approximately 2.2 miles southeast of the west-most intersection of Farm-to-Market Road 1430 and Highway 83, and approximately 1,000 feet south on county field road in Starr County, Texas.

TRD-200502643
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 27, 2005

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Notice of Water Rights Application

Notice mailed June 21, 2005.

APPLICATION NO. 14-1318B; San Angelo Water Supply Corporation, P.O. Box 1928, San Angelo, Texas 76902, applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to a Certificate of Adjudication pursuant to §11.122 and §11.042, Texas Water Code, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code §§295.1, et seq. Certificate of Adjudication No. 14-1318 authorizes the owner, San Angelo Water Supply Corporation, to maintain a dam and reservoir on the Middle Concho River, South Concho River, and Spring Creek, tributaries of the Colorado River, Colorado River Basin, and to impound therein not to exceed 170,000 acre-feet of water. Certificate of Adjudication No. 14-1318 also authorizes the owner to divert and use not to exceed 29,000 acre-feet of water from the reservoir for municipal purposes and an additional 25,000 acre-feet from the reservoir for agricultural purposes to irrigate a maximum of 15,000 acres of land within the boundaries of the Tom Green County Water Control and Improvement District (WCID) No. 1. The maximum combined diversion rate at Diversion Point No. 1 is 270 cfs, 150 cfs of that being for agricultural (irrigation) purposes and 120 cfs being for municipal purposes. The maximum diversion rate for Diversion Point No. 2 is 120 cfs. Several special conditions apply. The currently authorized water is diverted from Diversion Point No. 1 and the bed and banks of the Middle Concho River are authorized to transport the water to Lake Nasworthy for storage and subsequent use. Special Condition 5C states that "a conduit shall be constructed in the aforesaid dam with the inlet at elevation 1883.5 feet above mean sea level, having an opening of not less than five feet in diameter and equipped with a regulating gate for the purpose of permitting the free passage of the normal flow through the dam at all times and the passage of those water to which the Department may determine lower appropriators are entitled." San Angelo Water Supply Corporation, applicant, seeks an amendment to Certificate of Adjudication No. 14-1318 to modify Special Condition 5C to amend the elevation referenced for the inlet to the conduit through the dam from 1,883.5 feet above mean sea level to the actual built elevation of 1,885.0 feet above mean sea level. Applicant also seeks to add an additional diversion point on the south end of the Twin Buttes Dam on the South Concho River, located at Latitude 31.3121° N, Longitude 100.4856° W, approximately 11.25 miles southwest from the Tom Green County Courthouse in the City of San Angelo, Texas, with a diversion rate not to exceed a maximum 25 cfs (11,220 gpm) out of and in combination with the currently authorized 270 cfs diversion rate for Diversion Point No. 1. Owner seeks to construct a 20 inch diameter pipe over the dam for use in diverting the currently authorized water. Applicant further requests authorization to place the currently authorized water diverted from the proposed additional diversion point into Lake Nasworthy for storage and subsequent use via the South Concho River and requests to use its bed and banks between the Twin Buttes Dam and Lake Nasworthy, a portion approximately 4 miles in length. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on November 29, 2004. Additional fees and information were received on March 7, March 28, and May 26, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on April 19, 2005. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200502639
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 27, 2005

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Notice of Water Rights Application

Notice mailed June 24, 2005.

APPLICATION NO. 5888; Nine Hidden Lake, Ltd., 6601A Bee Caves Road, Austin, Texas 78746, Applicant, seeks a Water Use Permit pursuant to Texas Water Code §11.143 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code §§295.1, et seq. Applicant seeks authorization to maintain three existing domestic and livestock reservoirs and store private water for in-place recreation (amenity) purposes on unnamed tributaries of Wilbarger Creek, Colorado River Basin in Travis County, and impound therein a combined total of not to exceed 89.8 acre-feet of water in a housing development approximately 16 miles east of the City of Austin and 5 miles southeast of the City of Manor in Travis County. Reservoir 1 has a surface area of 12 acres and impounds 67.2 acre-feet of water. Station 2+25 on the center point of the dam is located at a bearing of S 6.00° E, 4,120

feet from the northern corner of the Gordon C. Jennings Survey No. 35, also being at Latitude 30.311° N, Longitude 97.522° W. Reservoir 2 has a surface area of 6.1 acres and impounds 19.5 acre-feet of water. Station 1+75 on the center point of the dam is located at a bearing of S 25.000° E, 1,730 feet from the northern corner of the Jennings Survey, also being at Latitude 30.319° N, Longitude 97.521° W. Reservoir 3 has a surface area of 1.3 acres and impounds 3.0 acre-feet of water. Station 1+50 on the center point of the dam is located at a bearing of S 19.000° E, 4,950 feet from the northern corner of the Jennings Survey, also being at Latitude 30.310° N, Longitude 97.519° W. Applicant indicates the three reservoirs will be maintained full with an alternate source of supply, and all inflows of State water will be passed downstream. Ownership of the land inundated by the three reservoirs is evidenced by a Special Warranty Deed filed in the Real Property Records of Travis County in Volume 13,339, pages 1017 - 1022, a General Warranty Deed file at Film Code TRV 2000190761, 10 pages, and a Special Warranty Deed file at Film Code TRV 2002044405. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and fees were received on March 14, 2005, and additional information was received on May 18, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on June 6, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200502641
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 27, 2005

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Proposal for Decision

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (TCEQ) on June 17, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Western Tools, Inc.; SOAH Docket No. 582-05-2071; TCEQ Docket No. 2003-0342-IHW-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Western Tools, Inc. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 North Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200502664
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 28, 2005

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 8, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 8, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Air Liquide America L.P.; DOCKET NUMBER: 2005-0533-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 01595000, Regulated Entity Number (RN) 101059335; LOCATION: Nederland, Jefferson County, Texas; TYPE OF FACILITY: cryogenic air separator; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 01595000, and the Code, §26.121(a), by failing to comply with the permitted limits and by failing to submit monitoring results; PENALTY: $7,120;

ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: Barton Good Oil Company, Inc.; DOCKET NUMBER: 2005-0497-PST-E; IDENTIFIER: RN101553600; LOCATION: Denison, Grayson County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Bee County Co-operative Association; DOCKET NUMBER: 2005-0529-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 287, RN101827384; LOCATION: Tynan, Bee County, Texas; TYPE OF FACILITY: agriculture cooperative that provides service as a fuel retailer and transporter; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide corrosion protection; 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and (d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to put the automatic tank gauge in test mode, by failing to monitor the piping, by failing to have the line leak detectors tested, and by failing to reconcile inventory control records; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(4) COMPANY: Bill L. Dover Company, Inc.; DOCKET NUMBER: 2005-0457-PST-E; IDENTIFIER: RN102015369; LOCATION: Jasper, Jasper County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $40,000; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: City of Boyd; DOCKET NUMBER: 2005-0507-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 2490002, RN101387496; LOCATION: Boyd, Wise County, Texas; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.121(a) and (b), by failing to complete and maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.46(d)(2)(A), (f)(3)(A)(iii), (E)(iv), (j), and (m)(4), by failing to maintain a free chlorine residual, by failing to maintain records of the date, location, and nature of water quality, pressure, or outage complaints received, by failing to provide copies and maintain records of the customer service inspection reports, and by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.41(c)(1)(C), (F), and (3)(A) and §290.46(n)(3), by failing to locate/construct a well at a distance greater than 500 feet from animal feed lots, solid waste disposal sites, lands on which sewage plant or septic tank sludge is applied, or lands irrigated by sewage plant effluent; by failing to secure a sanitary control easement and by failing to maintain copies of well completion date; 30 TAC §290.42(e)(3)(D) and (j) - (l), by failing to provide facilities for determining the amount of disinfectant used daily, by failing to provide documentation that all chemicals conform to American National Standards Institute/National Sanitation Foundation (ANSI-NSF) Standard 60 for direct additives and ANSI/NSF Standard 61 for indirect additives, and by failing to keep a thorough plant operations manual; 30 TAC §290.38(25) and §290.43(e), by failing to install all potable water storage tanks and pressure maintenance facilities in a lockable building that is designed to prevent intruder access; 30 TAC §290.43(c)(8) and §290.46(m)(1)(A), by failing to conduct inspections to determine that all ground and elevated storage tank interior and exterior coating systems provide protection to all metal surfaces; and 30 TAC §290.44(d) and §290.46(r), by failing to design, maintain, and operate the water system to provide a minimum pressure of 35 pounds per square inch; PENALTY: $1,320; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Chahal Investment Inc. dba PPG Foodmart; DOCKET NUMBER: 2005-0344-PST-E; IDENTIFIER: PST Facility Identification Number 45458, RN102358686; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $2,280; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Chapman, Inc.; DOCKET NUMBER: 2005-0470-PST-E; IDENTIFIER: RN103711321; LOCATION: Gainesville, Cooke County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $480; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Circle Bar Truck Corral, Inc.; DOCKET NUMBER: 2005-0737-PST-E; IDENTIFIER: PST Facility Identification Number 64553, RN102010519; LOCATION: Ozona, Crockett County, Texas; TYPE OF FACILITY: truck stop with retail sales of petroleum products; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.50(d)(1)(B)(iii)(IV), by failing to measure the water level in the bottom of each diesel underground storage tank (UST) to the nearest 1/8 of an inch; PENALTY: $15,600; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(9) COMPANY: Coastal Transport Company, Inc.; DOCKET NUMBER: 2005-0380-PST-E; IDENTIFIER: RN103870770; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $800; ENFORCEMENT COORDINATOR: Lori Thompson, (903) 535-5100; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Nancy Carter dba Crockett Conoco; DOCKET NUMBER: 2005-0455-PST-E; IDENTIFIER: PST Facility Identification Number 27605, RN102480282; LOCATION: Alanreed, Gray County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,520; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(11) COMPANY: Cross Roads Independent School District; DOCKET NUMBER: 2005-0534-MWD-E; IDENTIFIER: TPDES Permit Number 13789001, RN101526192; LOCATION: Malakoff, Henderson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13789001, and the Code, §26.121(a), by failing with the permitted effluent limitations for biochemical oxygen demand (BOD), total suspended solids (TSS), chlorine residual, and pH and by failing to submit a

discharge monitoring report; PENALTY: $4,320; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(12) COMPANY: Dreamtech Homes, Ltd.; DOCKET NUMBER: 2005-0741-WQ-E; IDENTIFIER: RN104558333; LOCATION: Magnolia, Montgomery County, Texas; TYPE OF FACILITY: residential home construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a), by failing to obtain authorization to discharge storm water; PENALTY: $600; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: City of Edgewood; DOCKET NUMBER: 2004-1540-PWS-E; IDENTIFIER: PWS Number 2340002, RN101404887; LOCATION: Edgewood, Van Zandt County, Texas; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.42(a)(1), (d)(6), (e)(3)(D), (f)(1)(E)(ii), and (h) and THSC, §341.0315(c), by failing to provide production capacities, by failing to provide adequate containment facilities, by failing to provide a method for determining the amount of disinfectant remaining, and by failing to provide sanitary facilities; 30 TAC §290.46(e), by failing to employ at least one trained and licensed personnel who holds a current Class B or higher surface water license; 30 TAC §290.121(a), by failing to maintain a copy of an up-to-date chemical and microbiological monitoring plan at the facility for review; 30 TAC §290.43(c)(6), by failing to maintain the potable storage tanks so that they are thoroughly tight against leakage; 30 TAC §290.45(b)(2)(B) and THSC, §341.0315(c), by failing to meet the minimum water system capacity requirement of having a treatment plan capacity of 0.6 gallons per minute per connection; and 30 TAC §290.46(m), by failing to maintain the elevated storage tank coatings; PENALTY: $2,940; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(14) COMPANY: Goff Homes, Ltd.; DOCKET NUMBER: 2005-0174-WQ-E; IDENTIFIER: TPDES General Permit Number TXR150000, RN104384730; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: land development; RULE VIOLATED: 30 TAC §305.125(1), TPDES General Permit Number TXR150000, by failing to implement the storm water pollution plan; PENALTY: $1,232; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: City of Grapeland; DOCKET NUMBER: 2005-0414-MWD-E; IDENTIFIER: TPDES Permit Number 0010181002, RN101702876; LOCATION: Grapeland, Houston County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0010181002, and the Code, §26.121(a), by failing to comply with permit limits; PENALTY: $3,700; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Miguel Hernandez, Sr.; DOCKET NUMBER: 2005-0137-IRR-E; IDENTIFIER: RN104466537; LOCATION: Red Oak, Ellis County, Texas; TYPE OF FACILITY: landscape irrigation system; RULE VIOLATED: 30 TAC §37.003, Texas Occupations Code, §1903.251, and 30 TAC §30.5(a) and §34.4(a), by installing a landscape irrigation system without an irrigator's license; and 30 TAC §344.58, by representing himself as a licensed irrigator by using the license number of another company; PENALTY: $2,750; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Himaloy, Inc. dba Papa Keith's Market & Deli; DOCKET NUMBER: 2005-0661-PST-E; IDENTIFIER: PST Facility Identification Number 60256, RN101839926; LOCATION: Riverside, Walker County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,360; ENFORCEMENT COORDINATOR: Sandra Anaya, (512) 239-0572; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: City of Joaquin; DOCKET NUMBER: 2005-0499-PWS-E; IDENTIFIER: PWS Number 2100010, RN101226686; LOCATION: Joaquin, Shelby County, Texas; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by exceeding the maximum contaminant level (MCL) for total trihalomethanes (TTHM) and by exceeding the MCL for haloacetic acids; PENALTY: $408; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: KAV Corporation Inc. dba Shop N Go Neighborhood Store; DOCKET NUMBER: 2005-0421-PST-E; IDENTIFIER: PST Facility Identification Number 25182, RN101446748; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system; 30 TAC §334.49(c)(4)(C) and the Code, §26.3475(d), by failing to test the cathodic protection system; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $7,600; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: City of Merkel; DOCKET NUMBER: 2003-0705-PWS-E; IDENTIFIER: RN103779450; LOCATION: Merkel, Taylor County, Texas; TYPE OF FACILITY: storage and drinking water distribution system; RULE VIOLATED: 30 TAC §290.109(c)(2) and (f)(3) and THSC, §341.031(a) and §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis and by exceeding the MCL for total coliform bacteria; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(21) COMPANY: City of Merkel; DOCKET NUMBER: 2004-0238-MWD-E; IDENTIFIER: RN103184800; LOCATION: Merkel, Taylor County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §319.11(b) and TPDES Permit Number 10786002, by failing to meet the analytical hold time for pH analysis and by failing to calibrate the dissolved oxygen meter; 30 TAC §305.125(1) and (5), TPDES Permit Number 10786002, and the Code, §26.121, by failing to accurately calculate the BOD and TSS loading values, by failing to comply with permit effluent limits for BOD, TSS, and pH based upon a 12-month record review of self-reported effluent quality data, by failing to accurately report the monthly average flow on the discharge monitoring reports, by failing to submit noncompliance notifications for effluent violations which exceeded effluent limitations, and by failing to maintain the growth of cattails and small trees along the water's edge of the wastewater treatment pond embankment; and 30 TAC §319.6 and

§319.11(c), by failing to meet the quality control requirements for the analysis of dissolved oxygen; PENALTY: $16,800; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(22) COMPANY: Preston Club Utility Corporation; DOCKET NUMBER: 2003-0406-MWD-E; IDENTIFIER: TPDES Permit Number 0013309001, RN102340486; LOCATION: Sherman, Grayson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §§305.125(1), 317.3(g)(4)(B), 317.4(a)(8), (b)(3), and (4), 317.6(b)(1)(E), 317.7(i), 319.6, 319.7(a) and (c), and 319.11(b), TPDES Permit Number 0013309001, and the Code, §26.121(a), by failing to comply with the permit limitations for BOD, TSS, and dissolved oxygen, by failing to submit noncompliance notifications, by failing to calibrate the secondary flow measuring device, by failing to install the backflow prevention device, by failing to maintain the diffusers in the aeration basis, by failing to maintain the chlorination system, by failing to provide a forced mechanical ventilation in the chlorination room, by failing to remove solids from the bar screen, by failing to maintain pH, chlorine, and dissolved oxygen meter calibration records, by failing to properly dispose of screenings, by failing to maintain records for samples, chain-of-custody tags, operations and maintenance, process control, chlorine residual analysis, and sample analysis, and by failing to analyze field samples within the required holding times; and 30 TAC §305.535(c)(1), TPDES Permit Number 0013309001, and the Code, §26.121(a), by failing to prevent an unauthorized discharge from the wastewater treatment plant and to submit their noncompliance notification; PENALTY: $26,000; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Rayburn Country Municipal Utility District; DOCKET NUMBER: 2003-1296-MWD-E; IDENTIFIER: RN102328564; LOCATION: near Sam Rayburn, Jasper County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), (5), and (18), §317.3, TPDES Permit Number 10788-001, and the Code, §26.121(a), by failing to comply with their permit effluent limits for total residual chlorine, TSS, and BOD, by failing to report 40% noncompliances, and by failing to ensure that all the systems of collection, treatment, and disposal are properly operated and maintained; and 30 TAC §319.11, by failing to comply with test procedures for the analysis of pollutants; PENALTY: $7,287; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(24) COMPANY: Rivercrest Independent School District; DOCKET NUMBER: 2005-0537-MWD-E; IDENTIFIER: TPDES Permit Number 11204-001, RN101701100; LOCATION: near Talco, Red River County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11204-001, and the Code, §26.121(a), by failing to comply with the permit effluent limits for BOD, TSS, and total chlorine residual; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(25) COMPANY: City of River Oaks; DOCKET NUMBER: 2005-0654-PWS-E; IDENTIFIER: PWS Number 2200069, RN101203842; LOCATION: River Oaks, Tarrant County, Texas; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.113(b)(1) and (f)(4) and THSC, §341.0315(c), by exceeding the MCL for TTHM; PENALTY: $585; ENFORCEMENT COORDINATOR: John Muennink, (713) 767-3500; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: City of Roma; DOCKET NUMBER: 2003-0291-MLM-E; IDENTIFIER: PWS Number 2140007, Municipal Solid Waste Permit Number 954; LOCATION: Roma, Starr County, Texas; TYPE OF FACILITY: public water system and municipal solid waste landfill; RULE VIOLATED: 30 TAC §290.46(r) and Agreed Order, Docket Number 2001-0104-PWS-E, by failing to operate the PWS facility to maintain a minimum pressure of at least 35 pounds per square inch throughout the distribution system; 30 TAC §290.39(j) and THSC, §341.0351, by failing to notify the executive director of any changes to the existing system; 30 TAC §290.42(d)(6)(E)(ii), by failing to provide adequate containment; 30 TAC §290.111(b)(2)(A)(i) and (ii), by failing to maintain the water turbidity below 0.3 nephelometric turbidity units; 30 TAC §290.110(b)(1)(A), (c)(2) and (5)(C), and (e)(5), and §290.111(e)(6), by failing to provide at least a 0.5-log inactivation of giardia lambia cysts and a two-log inactivation of viruses, by failing to monitor the turbidity of the combined filter effluent, by failing to monitor the disinfectant residual, and by failing to submit the monthly operating reports for surface water treatment plants; 30 TAC §330.4(m), by failing to submit a permit modification for any change; 30 TAC §330.55(b)(10) and §330.111, by failing to maintain landfill markers; 30 TAC §330.111 and §330.114(5)(C), by failing to provide training for appropriate landfill facility personnel; 30 TAC §330.111 and §330.119, by failing to provide a sign with letters at least three inches in height that properly identify the type of landfill site and by failing to repair erosion of an intermediate cover; and Agreed Order, Docket Number 2001-0104-PWS-E, by failing to certify compliance; PENALTY: $49,595; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(27) COMPANY: Rushing Paving Company, Ltd.; DOCKET NUMBER: 2005-0247-AIR-E; IDENTIFIER: Air Account Number GI01RRJ, RN102165974; LOCATION: Sherman, Grayson County, Texas; TYPE OF FACILITY: asphalt plant; RULE VIOLATED: 30 TAC §116.115(b) and (c), Air Permit Number T-18602, and THSC, §382.085(b), by failing to have operational records available for inspection, by failing to maintain the air pollution abatement equipment, by failing to obtain written authorization prior to using lime as an asphalt additive, and by failing to maintain emissions below the maximum allowable emission rates; and 30 TAC §111.111(a)(1)(B) and THSC, §382.085(b), by failing to maintain opacity limits; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Schmidt & Sons, Inc. dba La Grange Mini Mart; DOCKET NUMBER: 2004-2065-PST-E; IDENTIFIER: RN102716347; LOCATION: La Grange, Fayette County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to inspect and test the corrosion protection systems; 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.48(c)(5)(B)(ii), by failing to conduct inventory control for all USTs and by failing to ensure that a delivery certificate is renewed by timely and proper submission of a new UST registration and self-certification form; and 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate; PENALTY: $7,200; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(29) COMPANY: Shady Valley Management Corporation dba Shady Valley Golf Club; DOCKET NUMBER: 2005-0493-PST-E; IDENTIFIER: PST Facility Identification Number 59028, RN101560050; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: golf course with on-site PSTs; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all tanks are monitored for releases; and 30 TAC §334.8(c)(5)(A)(ii) and (B)(ii), by failing to make available to a common carrier a valid, current delivery certificate and by failing to renew a delivery certificate; PENALTY: $3,300; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: Silver Creek Lodge, Marina, and Yacht Club; DOCKET NUMBER: 2005-0430-MWD-E; IDENTIFIER: TPDES Permit Number 11394001, RN102184264; LOCATION: Burnet, Burnet County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11394001, and the Code, §26.121(a), by failing to comply with permitted effluent limits for dissolved oxygen, pH, and total chlorine residual, and by failing to submit the pH minimum and maximum results; PENALTY: $6,888; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(31) COMPANY: South Bosque Water Supply Corporation; DOCKET NUMBER: 2005-0623-PWS-E; IDENTIFIER: PWS Number 1550081, RN101190791; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: public water supply ; RULE VIOLATED: 30 TAC §290.41(c)(1)(F) and (3)(B), by failing to provide a sanitary easement for the well and by failing to provide a well casing that is 18 inches above the ground surface; 30 TAC §290.45(b)(1)(B)(i) and THSC, §341.0315(c), by failing to provide the required well capacity of 0.6 gallons per minute per connection; and 30 TAC §290.42(l), by failing to prepare and maintain a plant operations manual; PENALTY: $257 ; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(32) COMPANY: Nga Hong and Tien Tu dba Sunmart 151; DOCKET NUMBER: 2005-0698-PST-E; IDENTIFIER: PST Registration Number 63886, RN103020020; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $2,560; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(33) COMPANY: Texas Department of State Health Services; DOCKET NUMBER: 2005-0659-PST-E; IDENTIFIER: PST Facility Identification Number 74271, RN101436590; LOCATION: Harlingen, Cameron County, Texas; TYPE OF FACILITY: fleet refueling station; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and (b)(2)(A)(i)(III) and the Code, §26.3475(a) and (c)(1), by failing to provide a method of release detection and by failing to have a line leak detector tested for performance and operational reliability; PENALTY: $1,300; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(34) COMPANY: Texas Parks & Wildlife Department; DOCKET NUMBER: 2005-0751-PWS-E; IDENTIFIER: RN101236016; LOCATION: near Waco, Burleson County, Texas; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.44(h)(1)(A) and §290.47(i), by failing to install at any residence or establishment, additional protection in the form of an air gap or backflow prevention assembly; PENALTY: $320; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(35) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2005-0121-AIR-E; IDENTIFIER: RN104150123; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: acrylic acid and ester manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 260, and THSC, §382.085(b), by failing to comply with the emissions limits; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Chris Friesenhahn, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(36) COMPANY: City of Trinity; DOCKET NUMBER: 2003-0077-MWD-E; IDENTIFIER: TPDES Permit Number 0010617-001; LOCATION: Trinity, Trinity County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0010617-001, and the Code, §26.121(a), by failing to comply with effluent limits for ammonia nitrogen and dissolved oxygen; PENALTY: $3,528; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(37) COMPANY: U.S.A. Meat and Grain Company, Inc.; DOCKET NUMBER: 2005-0749-AIR-E; IDENTIFIER: RN100838564; LOCATION: Brownsville, Cameron County, Texas; TYPE OF FACILITY: grain elevator; RULE VIOLATED: 30 TAC §116.116(b)(1) and THSC, §382.085(b), by failing to obtain a permit amendment; 30 TAC §116.115(c), Air Permit Number 3139, and THSC, §382.085(b), by failing to control dust emissions and by failing to pick up and properly dispose of any spillage of raw or waste products; PENALTY: $3,200; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(38) COMPANY: U.S. Filter Recovery Service (Mid-Atlantic), Inc.; DOCKET NUMBER: 2005-0466-IHW-E; IDENTIFIER: Solid Waste Registration Number 41432, RN102694502; LOCATION: Luling, Caldwell County, Texas; TYPE OF FACILITY: used oil recycling and reclamation; RULE VIOLATED: 30 TAC §335.2(a), by failing to obtain authorization to store nonhazardous Class II solid waste; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(39) COMPANY: Uvalde County Farmers' Cooperative; DOCKET NUMBER: 2005-0601-PST-E; IDENTIFIER: PST Facility Identification Numbers 20072 and 77166, RN102609690 and RN101496336; LOCATION: Knippa, Uvalde County, Texas; TYPE OF FACILITY: fueling; RULE VIOLATED: 30 TAC §334.10(b)(1)(B), by failing to maintain all UST system records; PENALTY: $1,536; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(40) COMPANY: Mostafa A. Soliman dba Willowbrook Subdivision dba Willowbrook Water Supply; DOCKET NUMBER: 2005-0150-MLM-E; IDENTIFIER: PWS Number 2370049, Certificate of Convenience and Necessity Number 12568, RN101256121; LOCATION: Waller, Waller County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(A), (e)(4)(A), (f)(3)(A)(ii)(III), (i), and (m), §290.110(b)(4), and THSC, §341.033(a), by failing to maintain a residual disinfectant concentration of at least 0.2 milligrams per liter free chlorine, by failure of

a system that serves fewer than 250 connections, serves fewer than 750 people, and uses only groundwater or purchased treated water to maintain a record of the amount of water treated each week, by failing to employ trained and licensed personnel, by failing to adopt an adequate plumbing ordinance, regulations, or service agreement, and by failing to provide maintenance practices for a PWS; 30 TAC §290.41(c)(1)(F) and (3)(N), by failing to provide a sanitary control easement and by failing to install a flow meter on the well pump; 30 TAC §290.45(b)(1)(A)(i) and (ii), by failing to provide a well capacity of 1.5 gallons per minute per connection and by failing to provide a pressure tank capacity of 50 gallons per connection; and 30 TAC §291.93(3), by failing to provide a written planning report; PENALTY: $1,007; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200502649
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 28, 2005

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Request for Nominations for Appointment to Serve on the Municipal Solid Waste Management and Resource Recovery Advisory Council

The Texas Commission on Environmental Quality (TCEQ) is requesting nominations for eight individuals to serve on the Municipal Solid Waste Management and Resource Recovery Advisory Council (council) for the following positions. Six appointments will be made by the TCEQ commissioners for six-year terms and two appointments will be made to complete unexpired terms, ending August 31, 2007: an elected official from a county with any population size; an official from a city or county solid waste agency; a representative from a public solid waste district or authority; an elected official from a municipality with a population fewer than 25,000; an elected official from a municipality with a population of 750,000 or more; general public representative (all terms expire August 31, 2011); an elected official from a municipality with a population between 25,000 and 100,000 (term expires August 31, 2007); and an elected official from a municipality with a population between 100,000 and 750,000 (term expires August 31, 2007).

The council was created by the 69th Legislature, 1983. Members represent various interests, i.e., city and county solid waste agencies, public solid waste districts or authorities, commercial solid waste landfill operators, planning regions, an environmentalist, city and county officials, financial advisor, registered waste tire processor, professional engineer, solid waste professional, composting/recycling manager, and two general public representatives.

Upon request from the TCEQ commissioners, the council reviews and evaluates the effect of state policies and programs on municipal solid waste management; makes recommendations on matters relating to municipal solid waste management; recommends legislation to encourage the efficient management of municipal solid waste; recommends policies for the use, allocation, or distribution of the planning fund; and recommends special studies and projects to further the effectiveness of municipal solid waste management and recovery for the State of Texas. The council members are required by law to hold at least one meeting every three months. The meetings last one to two full days and are held in Austin, Texas.

To nominate an individual: 1) ensure the individual is qualified for the position which he/she is being considered; 2) submit a biographical summary which includes work experience; and 3) provide the nominee a copy of this request. The nominee must submit a letter indicating his/her agreement to serve, if appointed.

Written nominations and letters from nominees must be received 5:00 p.m., July 15, 2005. The appointments will be considered by the TCEQ commissioners on August 10, 2005, at 12100 Park 35 Circle, Building E, Room 201S. Please mail all correspondence to Gary W. Trim, Texas Commission on Environmental Quality, Waste Permits Division, MC 126, P.O. Box 13087, Austin, Texas 78711-3087 or fax (512) 239-2007. Questions regarding the council can be directed to Mr. Trim at (512) 239-6708, or e-mail: *gtrim@tceq.state.tx.us*. Additional information regarding the council is available on the following Web site: *http://www.tnrcc.state.tx.us/permitting/wasteperm/advcouncil/advisory.html.*

TRD-200502658
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 28, 2005

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Department of State Health Services

Notice of Amendment Number 36 to the Radioactive Material License of Waste Control Specialists, LLC

Notice is hereby given by the Department of State Health Services (department), Radiation Safety Licensing Branch that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176; 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

Amendment number 36 provides less restriction on initial packaged format of surface contaminated objects, such as a single, non-bulk, shipment of a piece of equipment or tool being cleaned and decontaminated for re-use through previously approved decontamination procedures.

The department has determined that the amendment of the license and the documentation submitted by the licensee provide reasonable assurance that the licensee's radioactive waste processing facility is operated in accordance with the requirements of 25 Texas Administrative Code (TAC), Chapter 289; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing, upon written request, within 30 days of the date of publication of this notice by a person affected as set out in 25 TAC, §289.205(f). A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to a county, in which the radioactive material is or will be located; or (b) doing business or has a legal interest in land in the county or adjacent county.

A person affected may request a hearing by writing Mr. Richard A. Ratliff, P.E., Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas, 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Texas Government Code Chapter, 2001), the formal hearing procedures of the department (25 TAC, §1.21 et seq.) and the procedures of the State Office of Administrative Hearings (1 TAC, Chapter 155).

A copy of the license amendment and supporting materials are available, by appointment, for public inspection and copying at the office of the Radiation Safety Licensing Branch, Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m., Monday-Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Toungate, Custodian of Records, Radiation Safety Licensing Branch.

TRD-200502584
Cathy Campbell
General Counsel
Department of State Health Services
Filed: June 23, 2005

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Notice of Emergency Impoundment Order on Bellaire General Hospital

Notice is hereby given that the Department of State Health Services (department) ordered all radioactive material located at Bellaire General Hospital (licensee--L02038), Houston, be impounded and temporarily stored at the department's headquarters in Austin, until the radioactive material is transferred to a licensed entity or the department issues other orders.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502585
Cathy Campbell
General Counsel
Department of State Health Services
Filed: June 23, 2005

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on C&G Chiropractic, Inc.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to C&G Chiropractic, Inc. (registrant--R20062-001) of Kingwood. A total penalty of $4,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502654
Cathy Campbell
General Counsel
Department of State Health Services
Filed: June 28, 2005

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Crosby Chiropractic Center, P.C.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Crosby Chiropractic Center, P.C. (registrant--R11891-000) of Crosby. A total penalty of $14,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502586
Cathy Campbell
General Counsel
Department of State Health Services
Filed: June 23, 2005

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on SC San Antonio, Inc., dba Southwest General Hospital

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to SC San Antonio Inc., dba Southwest General Hospital (registrant--R07035-000) of San Antonio. A total penalty of $8,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502655
Cathy Campbell
General Counsel
Department of State Health Services
Filed: June 28, 2005

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Tolunay-Wong Engineers, Inc.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Tolunay-Wong Engineers, Inc. (licensee--L04848-001) of Houston. A total penalty of $10,000 is proposed to be assessed the company for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502587
Cathy Campbell
General Counsel
Department of State Health Services
Filed: June 23, 2005

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Notice of Revocation of Certificates of Registration

The Department of State Health Services, having duly filed complaints pursuant to 25 Texas Administrative Code, §289.205, has revoked the following certificates of registration: Midland Walk In and Cardiology Clinic, PLLC, Midland, R17812, June 17, 2005; Radiology Services Inc., Bradenton, Florida, R20137, June 17, 2005; Baggett Chiropractic Center, Arlington, R21331, June 17, 2005; Anthony Belcher, D.P.M., Huntsville, R22378, June 17, 2005; G. Scott Sauer, D.D.S., Amarillo, R23088, June 17, 2005; First Pain Associates of Texas, LLC, Bedford, R26419, June 17, 2005; Chism Radiology, Bridgeport, R26564, June 17, 2005; Carson Laser Incorporated, Carson City, Nevada, Z01151, June 17, 2005.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502673
Cathy Campbell
General Counsel
Department of State Health Services
Filed: June 29, 2005

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Texas Health and Human Services Commission

Notice of Adopted Nursing Facility Payment Rates for State Veterans Homes

Proposal. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) adopts the following per diem payment rates for the four state-owned veterans nursing facilities for state fiscal year (SFY) 2006 effective September 1, 2005: Big Spring, $133.00; Bonham, $133.00; Floresville, $133.00; and Temple, $133.00.

HHSC conducted a public hearing to receive public comment on the proposed payment rates for state-owned veterans homes in the nursing facility program operated by the Texas Department of Aging and Disability Services. The hearing was held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates. The public hearing was held on May 31, 2005, at 9:00 a.m. in the Permian Basin Conference Room of Building H, Braker Center, at 11209 Metric Blvd., Austin, Texas 78758-4021.

Methodology and justification. The adopted rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.311.

TRD-200502653
Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: June 28, 2005

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Notice of Hearing on Proposed Provider Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 25, 2005, to receive public comment on proposed payment rates for 24-Hour Residential Child Care (Foster Care). This program is operated by the Texas Department of Family and Protective Services (DFPS). These payment rates are proposed to be effective September 1, 2005. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates. The public hearing will be held on July 25, 2005, at 9:00 a.m. in the Lone Star Conference Room 1047 of the Braker Center Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Maria Ebenhoeh, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101. Express mail can be sent, or written comments can be hand delivered, to Ms. Ebenhoeh, HHSC Rate Analysis, MC H-400, Braker Center Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Ebenhoeh at (512) 491-1998. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Maria Ebenhoeh, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101, telephone number (512) 491-1352.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Maria Ebenhoeh, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101, telephone number (512) 491-1352, by July 20, 2005, so that appropriate arrangements can be made.

Methodology and justification. The proposed rates were determined in accordance with the rate setting methodology codified as 1 Texas Administrative Code Chapter 355, Subchapter H, relating to Reimbursement Rates, §355.7103(i).

TRD-200502648
Lee Dickinson
Assistant General Counsel
Texas Health and Human Services Commission
Filed: June 27, 2005

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Notification of Consulting Procurement

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Request for Proposals for consultants for "Texas Health and Human Services Commission/Texas Department of Family and Protective Services Renewal Project: Project Management Assistance" (RFP #HHSC 529-05-0255). HHSC seeks to assure effective, timely and efficient implementation of the multifaceted efforts to improve the protective services delivered by the Texas Department of Family and Protective Services (DFPS) pursuant to this RFP. Consultants will provide project management consulting services that will maximize the success of the DFPS Renewal Project consistent with legislative direction regarding protective services for children and adults.

The RFP is located in full on HHSC's Business Opportunities Page at http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_opportunities.html. HHSC also posted notice of the procurement on the Texas Marketplace on July 8, 2005.

The successful contractor will be expected to advise HHSC and DFPS Executive leadership on the strategies for managing a broad portfolio of projects and initiatives that collectively will transform protective services for children and adults; provide project management services and support for several inter-related projects pertaining to the DFPS Renewal Project; provide expert project management support and guidance for DFPS managers and staff responsible for implementing specific DFPS Renewal Project initiatives; develop and implement strategies to enhance project management knowledge and skills among

DFPS staff on the DFPS Renewal Project; and, assist DFPS in developing and implementing effective strategies for large scale and complex procurement processes that may be needed to implement legislative direction for privatization of some CPS services.

HHSC will contract for a period of 12 months. HHSC will have the option to renew the term of the contract(s) for a period up to 36 months in increments not to exceed 12 months as necessary to complete the mission of this procurement.

Health and Human Services Commission's Sole Point-Of-Contact For Procurement is:

Paul Grubb, Project Contact Texas Health and Human Services Commission 4900 North Lamar Boulevard Mail Code 1125 Austin, Texas 78752 Voice (512) 424-6582 Fax (512) 424-6974 Paul.Grubb@hhsc.state.tx.us

All questions regarding the RFP must be sent in writing the above-referenced contact by 5:00 pm Central Time on July 18, 2005. HHSC will post all written questions received with HHSC's responses on its website on July 25, 2005, or as they become available. All proposals must be received at the above-referenced address on or before 5:00 pm Central Time on August 12, 2005. Proposals received after this time and date will not be considered.

HHSC will hold a Vendor Conference on July 13, 2005 from 2:00 pm to 4:00 pm at Room 4501, Brown-Heatly Building, Texas Health and Human Services Commission, 4900 North Lamar, Austin, Texas 78752.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-200502679
Kathleen Cordova
Assistant General Counsel
Texas Health and Human Services Commission
Filed: June 29, 2005

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Notification of Consulting Procurement

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Request for Proposals for Evaluation of the Food Stamp Nutrition Education Program (RFP# 529-06-0003). HHSC seeks to procure the services of an evaluator who will measure the success of the Food Stamp Nutrition Education (FSNE) program in Texas, which provides opportunities to reach food stamp eligibles with nutrition and lifestyle messages that encourage healthy behaviors.

The RFP is located in full on HHSC's Business Opportunities Page at http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_opportunities.html. HHSC also posted notice of the procurement on the Texas Marketplace.

The successful contractor will be expected to begin services on or about October 1, 2005.

Health and Human Services Commission's Sole Point-Of-Contact For Procurement

Donna Bragdon Project Manager Health and Human Services Commission 909 West 45th, Building 2 Austin, Texas 78751 (512) 206-4584 donna.bragdon@hhsc.state.tx.us

All proposals must be received at the above-referenced address on or before 5:00 PM Central Time on July 29, 2005. Proposals received after this time and date will not be considered.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-200502680
David Brown
Assistant General Counsel
Texas Health and Human Services Commission
Filed: June 29, 2005

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Texas Department of Housing and Community Affairs

Notice to Public and to All Interested Mortgage Lenders

The Texas Department of Housing and Community Affairs (the "Department") intends to implement a Mortgage Credit Certificate Program (the "Program") to assist eligible very low, low and moderate income first-time homebuyers purchase a residence located within the State of Texas.

Under the Program, a first-time homebuyer who satisfies the eligibility requirements described below may receive a federal income tax credit in an amount equal to the product of the certificate credit rate established under the Program and the interest paid or accrued by the homeowner during the taxable year on the remaining principal of the certified indebtedness amount incurred by the homeowner to acquire the principal residence of the homeowner; provided that such credit allowed in any taxable year does not exceed $2,000. In order to qualify to receive a credit certificate, the homebuyer must qualify for a conventional, FHA, VA or other home mortgage loan from a lending institution and must meet the other requirements of the Program.

The credit certificates will be issued to qualified mortgagors on a first-come, first-served basis by the Department acting through an administrator, which will review applications from lending institutions and prospective mortgagors to determine compliance with the requirements of the Program and determine that credit certificates remain available under the Program. No credit certificates will be issued prior to 90 days from the date of publication of this notice nor after the date that all of the credit certificate amount has been allocated to homebuyers and in no event after December 31, 2007.

In order to satisfy the eligibility requirements for a certificate under the Program, (a) the prospective residence must be a single-family residence located within the State of Texas that can be reasonably expected to become the principal residence of the mortgagor within a reasonable period of time after the financing is provided; (b) the prospective homebuyer's current income must not exceed, (i) for families of three or more persons, 115% (140% in certain targeted areas) of the area median income, and (ii) for individuals and families of two persons, 100% (120% in certain targeted areas) of the area median income; (c) the prospective homebuyer must not have owned a home as a principal residence during the past three years; (d) the acquisition cost of the residence must not exceed 90% (110%, in the case of certain targeted area residences) of the average area purchase price applicable to the residence; and (e) no part of the proceeds of the qualified indebtedness is used to acquire or replace an existing mortgage. To obtain additional information on the Program, including the current income and purchase price limits (which are subject to revision and adjustment from time to

time by the Department pursuant to applicable federal law and Department policy), please contact Sue Cavazos at the Texas Department of Housing and Community Affairs, 507 Sabine Street, 7th Floor, Austin, Texas 78701; (512) 475-3962.

The Department intends to maintain a list of single family mortgage lenders that will participate in the Program by making loans to qualified holders of these mortgage credit certificates. Any lender interested in appearing on this list or in obtaining additional information regarding the Program should contact Sue Cavazos at the Texas Department of Housing and Community Affairs, 507 Sabine Street, 7th Floor, Austin, Texas 78701; (512) 475-3962. The Department may schedule a meeting with lenders to discuss in greater detail the requirements of the Program.

This notice is published in satisfaction of the requirements of Section 25 of the Internal Revenue Code of 1986, as amended, and Treasury Regulation Section 1.25-3T(j)(4) issued thereunder regarding the public notices prerequisite to the issuance of mortgage credit certificates and to maintaining a list of participating lenders.

TRD-200502676
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 29, 2005

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Texas Department of Insurance

Company Licensing

Application to change the name of LOYA PREFERRED INSURANCE COMPANY to VISION INSURANCE COMPANY a domestic Fire and/or Casualty company. The home office is in El Paso, Texas.

Application to change the name of MID-WEST NATIONAL LIFE INSURANCE COMPANY OF TENNESSEE to MID-WEST NATIONAL LIFE AND HEALTH INSURANCE COMPANY a foreign Life, Accident and/or Health company. The home office is in Knoxville, Tennessee.

Application for admission to the State of Texas by CONSUMERS LIFE INSURANCE COMPANY, a foreign life, Accident and/or Health company. The home office is in Cleveland, Ohio.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200502675
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 29, 2005

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of SUMMIT AMERICA INSURANCE SERVICES, L.C., a foreign third party administrator. The home office is OVERLAND PARK, KANSAS.

Any objections must be filed within 20 days after this notice is published in the Texas Register, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200502674
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 29, 2005

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Texas Lottery Commission

Instant Game Number 574 "Poker Showdown"

1.0 Name and Style of Game.

A. The name of Instant Game No. 574 is "POKER SHOWDOWN". The play style is "cards".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 574 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 574.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 2 DIAMOND SYMBOL, 3 DIAMOND SYMBOL, 4 DIAMOND SYMBOL, 5 DIAMOND SYMBOL, 6 DIAMOND SYMBOL, 7 DIAMOND SYMBOL, 8 DIAMOND SYMBOL, 9 DIAMOND SYMBOL, 10 DIAMOND SYMBOL, J DIAMOND SYMBOL, Q DIAMOND SYMBOL, K DIAMOND SYMBOL, A DIAMOND SYMBOL, 2 CLUB SYMBOL, 3 CLUB SYMBOL, 4 CLUB SYMBOL, 5 CLUB SYMBOL, 6 CLUB SYMBOL, 7 CLUB SYMBOL, 8 CLUB SYMBOL, 9 CLUB SYMBOL, 10 CLUB SYMBOL, J CLUB SYMBOL, Q CLUB SYMBOL, K CLUB SYMBOL, A CLUB SYMBOL, 2 HEART SYMBOL, 3 HEART SYMBOL, 4 HEART SYMBOL, 5 HEART SYMBOL, 6 HEART SYMBOL, 7 HEART SYMBOL, 8 HEART SYMBOL, 9 HEART SYMBOL, 10 HEART SYMBOL, J HEART SYMBOL, Q HEART SYMBOL, K HEART SYMBOL, A HEART SYMBOL, 2 SPADE SYMBOL, 3 SPADE SYMBOL, 4 SPADE SYMBOL, 5 SPADE SYMBOL, 6 SPADE SYMBOL, 7 SPADE SYMBOL, 8 SPADE SYMBOL, 9 SPADE SYMBOL, 10 SPADE SYMBOL, J SPADE SYMBOL, Q SPADE SYMBOL, K SPADE SYMBOL, A SPADE SYMBOL, $5.00, $10.00, $20.00, $50.00, $100, $500, $1,000, $5,000, $75,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 574 - 1.2D

PLAY SYMBOL	CAPTION
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUN
$500	FIV HUN
$1,000	ONE THOU
$5,000	FIV THOU
$75,000	75 THOU
2 DIAMONDS CARD SYMBOL	2DMD
3 DIAMONDS CARD SYMBOL	3DMD
4 DIAMONDS CARD SYMBOL	4DMD
5 DIAMONDS CARD SYMBOL	5DMD
6 DIAMONDS CARD SYMBOL	6DMD
7 DIAMONDS CARD SYMBOL	7DMD
8 DIAMONDS CARD SYMBOL	8DMD
9 DIAMONDS CARD SYMBOL	9DMD
10 DIAMONDS CARD SYMBOL	10DMD
J DIAMONDS CARD SYMBOL	JDMD
Q DIAMONDS CARD SYMBOL	QDMD
K DIAMONDS CARD SYMBOL	KDMD
A DIAMONDS CARD SYMBOL	ADMD
2 CLUBS CARD SYMBOL	2CLB
3 CLUBS CARD SYMBOL	3CLB
4 CLUBS CARD SYMBOL	4CLB
5 CLUBS CARD SYMBOL	5CLB
6 CLUBS CARD SYMBOL	6CLB
7 CLUBS CARD SYMBOL	7CLB
8 CLUBS CARD SYMBOL	8CLB
9 CLUBS CARD SYMBOL	9CLB
10 CLUBS CARD SYMBOL	10CLB
J CLUBS CARD SYMBOL	JCLB
Q CLUBS CARD SYMBOL	QCLB
K CLUBS CARD SYMBOL	KCLB
A CLUBS CARD SYMBOL	ACLB
2 HEARTS CARD SYMBOL	2HRT
3 HEARTS CARD SYMBOL	3HRT
4 HEARTS CARD SYMBOL	4HRT
5 HEARTS CARD SYMBOL	5HRT
6 HEARTS CARD SYMBOL	6HRT
7 HEARTS CARD SYMBOL	7HRT
8 HEARTS CARD SYMBOL	8HRT
9 HEARTS CARD SYMBOL	9HRT
10 HEARTS CARD SYMBOL	10HRT
J HEARTS CARD SYMBOL	JHRT
Q HEARTS CARD SYMBOL	QHRT

K HEARTS CARD SYMBOL	KHRT
A HEARTS CARD SYMBOL	AHRT
2 SPADES CARD SYMBOL	2SPD
3 SPADES CARD SYMBOL	3SPD
4 SPADES CARD SYMBOL	4SPD
5 SPADES CARD SYMBOL	5SPD
6 SPADES CARD SYMBOL	6SPD
7 SPADES CARD SYMBOL	7SPD
8 SPADES CARD SYMBOL	8SPD
9 SPADES CARD SYMBOL	9SPD
10 SPADES CARD SYMBOL	10SPD
J SPADES CARD SYMBOL	JSPD
Q SPADES CARD SYMBOL	QSPD
K SPADES CARD SYMBOL	KSPD
A SPADES CARD SYMBOL	ASPD

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 574 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100 or $500.

I. High-Tier Prize - A prize of $1,000, $5,000 or $75,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (574), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 574-0000001-001.

L. Pack - A pack of "POKER SHOWDOWN" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "POKER SHOWDOWN" Instant Game No. 574 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "POKER SHOWDOWN" Instant Game is determined once the latex on the ticket is scratched off to expose 61 (sixty-one) Play Symbols. In each hand if a player gets a straight, the player will win the prize shown. If the player gets a flush, the player will win double the prize shown. If the player gets a straight flush, the player will win triple the prize shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 30 (thirty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 30 (thirty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 30 (thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 30 (thirty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. All Cards 2 through Ace will be used.

C. Aces are high when creating a Straight.

D. An Ace will never appear with cards 2, 3, 4 and 5 in the same hand.

E. A wraparound Straight will never appear (e.g. Q, K, A, 2, 3) in the same hand.

F. No two non-winning hands on a single ticket will contain five cards of the same value in any order.

G. All cards within each DEAL on a single ticket will be unique.

H. On winning Hands, the only poker hand categories allowed are straight, flush, and straight flush. A Royal Flush is not considered a straight flush.

I. On non-winning hands, no hand will ever contain a non-winning poker combination in any order (i.e. a pair, 2 pair, 3 of a kind, full house, royal flush, 4 of a kind).

J. Straights (including a straight flush) will always appear in ascending order from left to right.

K. Players can win up to ten (10) times.

L. On winning tickets, all non-winning prize amounts will be different from winning prize amounts.

M. Non-winning tickets will not contain more than two like prize amounts.

2.3 Procedure for Claiming Prizes.

A. To claim a "POKER SHOWDOWN" Instant Game prize of $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "POKER SHOWDOWN" Instant Game prize of $1,000, $5,000 or $75,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $599 or more, the Texas Lottery

shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "POKER SHOWDOWN" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16630, Austin, Texas 78761-6630. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $599 from the "POKER SHOWDOWN" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $599 from the "POKER SHOWDOWN" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,960,000 tickets in the Instant Game No. 574. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 574 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	475,200	8.33
$10	475,200	8.33
$20	79,200	50.00
$50	59,400	66.67
$100	8,250	480.00
$500	957	4,137.93
$1,000	198	20,000.00
$5,000	10	396,000.00
$75,000	3	1,320,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.61. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 574 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 574, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200502672
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 29, 2005

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State Preservation Board

Notice of Consultant Contract Award

The State Preservation Board ("SPB"), in accordance with Chapter 2254 of the Texas Government Code, has awarded a consultant contract to People, Places, & Design Research, 65 South Street, Ste. 10, Northhampton, MA 01060, for services to produce a museum exhibit front-end audience evaluation. Effective date of the consultant contract is June 28, 2005, with a written final analysis report due to the on or before October 15, 2005, the ending date of the contract. Estimated cost for the term of the contract is $18,200, not including reimbursable travel.

Questions concerning this notice may be directed to David Denney, Director of Public Programs, The Bob Bullock Texas State History Museum, (512) 936-2311.

TRD-200502651
Linda Gaby, CTPM
Director of Administration
State Preservation Board
Filed: June 28, 2005

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Public Utility Commission of Texas

Notice of Application for Waiver of Requirements of PURA Chapter 62, Subchapter D

Notice is given to the public that an application was filed with the Public Utility Commission of Texas (commission) on June 24, 2005, for waiver of all of the requirements of the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001 - 64.158 (Vernon 1998 & Supplement 2005) (PURA).

Docket Number and Title: Docket Number 31282, *Petition for Waiver of Separate Video Programming Affiliate Requirements.*

Application: Southwestern Bell Telephone Company, L.P., doing business as SBC Texas, requested that the commission grant a waiver of all of the requirements of PURA Chapter 62, Subchapter D.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 31282.

TRD-200502671
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 2005

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On June 17, 2005, Dialtone Depot, Inc. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60364. Applicant intends to relinquish its certificate.

The Application: Application of Dialtone Depot, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 31253.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 13, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31253.

TRD-200502644
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 27, 2005

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Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on June 23, 2005, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Sprint Communications Company L.P.'s (Sprint) request for one thousand-block with metro calling capability in the Baytown rate center.

Docket Title and Number: Petition of Sprint Communications Company L.P. for Waiver of NeuStar Denial of Number Block Request in the Baytown Rate Center, Docket Number 31277.

The Application: Sprint submitted a petition to the Pooling Administrator (PA) to provide it with one thousand-block with metro calling capability in the Baytown rate center.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 13, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31277.

TRD-200502645
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 27, 2005

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Office of Rural Community Affairs

Notice of 2004 Texas Community Development Program Grant Awards

The Office of Rural Community Affairs announces that the units of general local government listed as follows have been selected as contract recipients for 2004 program year Colonia Construction Funds, Colonia Planning Funds, Colonia Economically Distressed Areas Program Funds, Small Towns Environment Program Funds, and Housing Infrastructure Funds under the Texas Community Development Program established pursuant to Texas Government Code, Chapter 487, §487.351.

A contract is not effective until executed by the unit of general local government and the Executive Director of the Office of Rural Community Affairs.

2004 Colonia Construction Fund grantees:

Aransas County--$500,000, Bee County--$500,000, Cameron County--$476,891, Hidalgo County--$500,000, Hudspeth County--$360,273, Jim Wells County--$500,000, Kleberg County--$500,000, Live Oak County--$500,000, Loving County--$500,000, Maverick County--$500,000, Nueces County--$500,000, Presidio County--$229,300, San Patricio County--$500,000, and Schleicher County--$267,225.

2004 Colonia Planning Fund grantees:

Kleberg County--$75,000, Live Oak County--$75,000, and San Patricio County--$120,000.

2004 Colonia Economically Distressed Areas Program Fund grantees:

Cameron County--$500,000, Cameron County--$500,000, Hidalgo County--$500,000, and Webb County--$500,000.

2004 Small Towns Environment Program Fund grantees:

Annona--$68,171, Edgewood--$196,100, El Paso County--$98,045, Henderson County--$350,000, Hopkins County--$122,170, Jefferson County--$350,000, Panola County--$221,262, Payne Springs--$261,000, Red River County--$350,000, Rusk County--$327,660, Smith County--$260,099, Trinidad--$208,449, and Wood County--$198,180.

2004 Housing Infrastructure Fund grantees:

Burnet--$400,000, Center--$400,000, Cleveland--$298,960, Combes--$400,000, Hillsboro--$400,000, Madisonville--$226,500, and Mathis--$400,000.

TRD-200502667
Charles S. Stone
Executive Director
Office of Rural Community Affairs
Filed: June 29, 2005

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Notice of 2005 Texas Community Development Program Grant Award

The Office of Rural Community Affairs announces that the units of general local government listed as follows have been selected as contract recipients for 2005 program year Community Development Funds, Community Development Supplemental Funds, and Planning and Capacity Building Funds under the Texas Community Development Program established pursuant to Texas Government Code, Chapter 487, §487.351.

A contract is not effective until executed by the unit of general local government and the Executive Director of the Office of Rural Community Affairs.

2005 Community Development Fund grantees:

Agua Dulce-$300,000, Alpine-$266,596, Ames-$350,000, Amherst-$250,000, Anson-$250,000, Aransas-$County 300,000, Archer City-$175,000, Atlanta-$250,000, Avinger-$240,000, Bailey-$125,000, Bandera County-$250,000, Bartlett-$250,000, Bastrop County-$250,000, Bedias-$250,000, Big Wells-$267,386, Blooming Grove-$250,000, Boyd-$250,000, Brackettville-$245,847, Brewster County-$266,596, Brownsboro-$250,000, Buckholts-$250,000, Bynum-$250,000, Caddo Mills-$250,000, Callisburg-$125,000, Calvert-$250,000, Cameron-$250,000, Cameron County-$331,808, Camp Wood-$123,709, Carrizo Springs-$358,192, Carthage-$250,000, Celina-$250,000, Center-$250,000, Centerville-$250,000, Chambers County-$350,000, Cherokee County-$250,000, Clarksville-$250,000, Cleburne-$250,000, Clint-$266,596, Colorado County-$350,000, Commerce-$250,000, Como-$250,000, Coolidge-$250,000, Cotulla-$279,551, Crandall-$250,000, Crockett County-$174,999, Crystal City-$318,374, Cumby-$250,000, Cushing-$250,000, Daisetta-$350,000, Dawson-$250,000, DeKalb-$250,000, Dilley-$250,000, Dripping Springs-$250,000, Dublin-$250,000, Eagle Lake-$350,000, Ector County-$350,000, Edgewood-$250,000, El Paso County-$266,596, Electra-$174,950, Eustace-$250,000, Evant-$250,000, Falfurrias-$300,000, Flatonia-$250,000, Florence-$250,000, Freestone County-$250,000, Galveston County-$350,000, Goliad County-$250,000, Goodrich-$250,000, Grand Saline-$250,000, Grandfalls-$350,000, Granite Shoals-$250,000, Greenville-$250,000, Gregory-$300,000, Groesbeck-$250,000, Groveton-$250,000, Gunter-$125,000, Gustine-$250,000, Hall County-$250,000, Hansford County-$250,000, Happy-$250,000, Hearne-$250,000, Henderson-$250,000, Hico-$250,000, Holland-$250,000, Honey Grove-$125,000, Horizon City-$266,596, Huntington-$250,000, Italy-$250,000, Jacksonville-$250,000, Jasper-$250,000, Jewett-$250,000, Jim Hogg County-$800,000, Jim Wells County-$300,000, Karnes City-$250,000, Kaufman-$250,000, Kenedy-$250,000, Kerens-$250,000, Kerrville-$250,000, Kilgore-$250,000, Kountze-$250,000, Krum-$250,000, La Coste-$250,000, La Feria-$331,808, Ladonia-$125,000, Lexington-$250,000, Live Oak County-$300,000, Llano-$250,000, Log Cabin-$250,000, Lone Star-$250,000, Loraine-$250,000, Los Fresnos-$331,500, Luling-$250,000, Lytle-$250,000, Marlin-$250,000, Matagorda County-$350,000, Mathis-$300,000, Maud-$250,000, Maverick County-$800,000, Menard-$174,999, Milford-$250,000, Moody-$250,000, Muenster-$125,000, Munday-$250,000, Nixon-$250,000, Nocona-$175,000, Onalaska-$250,000, Orange County-$250,000, Overton-$250,000, Paducah-$129,761, Paint Rock-$166,666, Palacios-$350,000, Pearsall-$250,000, Pelican Bay-$250,000, Plains-$250,000, Point Comfort-$250,000, Port Isabel-$331,808, Post-$250,000, Pottsboro-$125,000, Presidio-$266,596, Presidio County-$266,596, Quanah-$175,000, Quinlan-$250,000, Quitaque-$250,000, Rankin-$350,000, Raymondville-$331,808, Reeves County-$350,000, Rio Hondo-$331,808, Rockport-$300,000, Rocksprings-$222,295, Roscoe-$249,500, Rose City-$250,000, Rotan-$250,000, Runge-$250,000, San Augustine-$250,000, San Augustine County-$250,000, San Jacinto County-$250,000, Santa Rosa-$331,808, Seadrift-$250,000, Seymour-$175,000, Silsbee-$250,000, Silverton-$250,000, Socorro-$266,596, Sonora-$174,999, Sour Lake-$250,000, Springlake-$250,000, Springtown-$250,000, Starr County-$800,000, Sweetwater-$250,000, Tahoka-$250,000, Tenaha-$250,000, Texline-$250,000, Thrall-$250,000, Tom Bean-$114,000, Tom Green County-$174,999, Toyah-$350,000, Troup-$250,000, Victoria County-$250,000, Vinton-$266,595, Webb County-$800,000, West Orange-$250,000, Whiteface-$250,000, Whitehouse-$250,000, Whitesboro-$125,000, Willis-$350,000, Wilson-$250,000, Wolfe City-$250,000, and Zapata County-$800,000

2005 Community Development Supplemental Fund grantees:

Aledo-$250,000, Baird-$250,000, Barry-$250,000, Bellville-$350,000, Bishop-$300,000, Burton-$250,000, Coahoma-$350,000, Cooper-$188,229, Corrigan-$250,000, Cottonwood Shores-$250,000, Crosbyton-$250,000, Devine-$250,000, Eden-$173,850, Edna-$250,000, El Cenizo-$749,343, Ferris-$250,000, Franklin County-$250,000, Granger-$250,000, Groves-$250,000, Hamilton-$250,000, Henrietta-$175,000, Jourdanton-$250,000, Kaufman County-$250,000, Lovelady-$250,000, Megargel-$175,000, Meridian-$250,000, Palestine-$250,000, Panhandle-$250,000, Primera-$331,808, Quitman-$250,000, Refugio County-$300,000, Smith County-$250,000, Southmayd-$125,000, Stinnett-$250,000, Streetman-$250,000, Throckmorton-$250,000, Valentine-$266,596, Valley View-$115,592, Weimar-$350,000, and Zavala County-$318,374

2005 Planning and Capacity Building Fund grantees:

Ames-$29,350, Blanco-$32,750, Columbus-$49,200, Crockett-$41,800, Ector-$26,800, Ferris-$47,200, Honey Grove-$40,400, La Feria-$48,000, Ladonia-$26,800, Lockney-$47,200, Morton-$47,200, New Summerfield-$26,800, Nolanville-$32,750, Olton-$47,200, Post-$45,000, Rusk-$50,000, Savoy-$15,200, Taft-$49,200, Tom Bean-$32,750, Trinity-$47,200, Turkey-$20,600, and Wink-$25,300

TRD-200502602
Charles S. Stone
Executive Director
Office of Rural Community Affairs
Filed: June 23, 2005

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Texas A&M University, Board of Regents

Request for Proposal

The Texas A&M University System (A&M System) requests proposals from professional firms interested in representing the A&M System and its members in certain tax matters.

Description: The A&M System is composed of 19 members (including 9 universities, 1 health science center, 8 state agencies and 1 System Administrative and General Office) supported by legislative appropriations, tuition, fees, income from auxiliary enterprises, the Permanent University Fund, the Available University Fund, grants, gifts, sponsored research and other sources of revenues, all of which may be impacted by federal tax law. For assistance with such issues, the A&M System will engage outside counsel for review of and advice regarding tax matters relating to higher education including, but not limited to, the following: unrelated business income tax; retirement programs; compensation issues; deferred compensation plans; nonresident alien tax issues; expatriate tax issues; representation with the Internal Revenue Service; and personal income tax issues as they relate to donors.

The A&M System invites proposals in response to this Request for Proposal (RFP) from qualified firms for the provision of such legal and tax services (for the period September 1, 2005 through August 31, 2006) under the direction and supervision of the A&M System Office of Budgets and Accounting.

Responses: Responses to this RFP should include at least the following information:

a description of the firm's or attorney's qualifications for performing the legal services, including the firm's past experience in the above referenced matters as they relate specifically to institutions of higher education;

the names and experience of the attorneys assigned to work on such matters;

the availability of the lead attorney and others assigned to the project;

a description of the firm's efforts to encourage and develop the participation of minorities and women in the provision of the firm's legal services generally, and tax matters, in particular;

fee information (either in the form of hourly rates for each partner, associate, paralegal and technical advisor who may be assigned to perform services to the A&M System, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses;

a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost-effective manner;

representation that should the firm be selected by the A&M System to provide legal assistance in tax matters, the firm will enter into the attached "Outside Counsel Agreement"; and

confirmation of willingness to comply with policies, directives and guidelines of the A&M System and the Attorney General of the State of Texas. Qualified firms must be able to exhibit compliance with House Bill No. 1, 78th Legislature, Regular Session, Article IX, Section 6.23, or as superseded, concerning matters against the State of Texas or any of its agencies.

Format and Person to Contact: Three copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8.5 by 11 inch paper with all pages sequentially numbered, and either stapled or bound together. The copies should be sent by mail or delivered in person, marked on the envelope **"Response to Request for Proposal"** and addressed to:

B. J. Crain

Associate Vice Chancellor for Budgets and Accounting

Office of Budgets and Accounting

The Texas A&M University System

A&M System Building, Suite 2003

200 Technology Way

College Station, Texas 77845-3424

Evaluation: Proposals sent in response to this RFP will be evaluated in light of several criteria. The criteria are expertise, availability of a lead attorney, prior experience in handling tax matters related to higher education, procedures for providing timely and cost-effective services, and reasonableness of fees. Although the fee structure and overall cost of this representation will be an extremely important factor in evaluating proposals submitted in response to this RFP, the successful firm(s) will clearly demonstrate exceptional expertise and experience with the tax matters made the subject of this RFP.

Deadline for submission of Response: All proposals must be received by the Office of Budgets and Accounting of the A&M System at the address set forth above not later than 5:00 p.m., August 1, 2005. We reserve the right to consider late proposals but cannot guarantee their consideration.

TRD-200502681
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: June 29, 2005

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Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Mount Pleasant, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Mount Pleasant, Mount Pleasant Regional Airport, TxDOT CSJ No. 0519MTPLS, Scope: To provide engineering/design services to extend runway and rehabilitate MIRL, Runway 17-35; extend taxiway, relocate PAPI and REIL, rehabilitate existing apron, improve drainage; rehabilitate existing hangar access taxiway; rehabilitate existing taxiway; mark temporary displaced threshold; supply erosion/sedimentation controls; prepare site preparation for runway and taxiway extension; provide obstruction lights for power pole No. 96; seed; mark runway 17-35; install hold and runway exit signs at the Mount Pleasant Regional Airport.

The DBE/HUB goal is set at 5%. TxDOT Project Manager is Harry Lorton, P.E.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting "Mount Pleasant."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address **http://www.dot.state.tx.us/avn/avn550.doc**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Six completed, unfolded copies of Form AVN-550 must be postmarked by U. S. Mail by midnight August 1, 2005 (CDT). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDT) on August 2, 2005. Overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. August 2, 2005 (CDT). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at **www.dot.state.tx.us/business/avnconsultinfo.htm**. All firms will be notified and the top rated

firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Harry Lorton, P.E., Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200502660
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: June 28, 2005

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Aviation Division - Request for Proposal for Aviation Engineering Services

The Wilbarger County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: Wilbarger County, Wilbarger County Airport. TxDOT CSJ No.:05HGVRNON. Scope: Provide engineering/design services for a pre-engineered metal aircraft hangar building system with associated appurtenances on an existing concrete foundation at the Wilbarger County Airport.

The DBE goal is set at 0%. TxDOT Project Manager is Megan Caffall.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting "Wilbarger County Airport".

Interested firms shall utilize the latest version of Form AVN-550 (Form 550), titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address **http://www.dot.state.tx.us/avn/avn550.doc**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. To ensure utilization of the latest version of Form 550, firms are encouraged to download Form 550 from the TxDOT website as addressed above. Utilization of Form 550 from a previous download may not be the exact same format. Form 550 is an MS Word Template.

Five (5) completed, unfolded copies of Form 550 must be postmarked by U. S. Mail by midnight July 29, 2005 (CDT). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDT) on August 1, 2005. Overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. August 1, 2005 (CDT). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at **www.dot.state.tx.us/business/avnconsultinfo.htm**. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Megan Caffall, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200502662
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: June 28, 2005

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Aviation Division - Request for Proposal for Professional Services

The City of Mount Pleasant through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: City of Mount Pleasant, Mount Pleasant Regional Airport, TxDOT CSJ No. 05EAMTPLS, Scope: To provide an environmental evaluation of a proposed runway and taxiway extension from 5000 feet to 6000 feet at the Mount Pleasant Regional Airport.

The HUB goal is set at 0%. TxDOT Project Manager is Sandra Gaither.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address **http://www.dot.state.tx.us/avn/avn551.doc**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is an MS Word Template.

Six unfolded copies of Form AVN-551 must be postmarked by U. S. Mail by midnight August 1, 2005 (CDT). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDT) on August 2, 2005. Overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Please mark the envelope of

the forms to the attention of Sheri Quinlan. Hand delivery must be received by 4:00 p.m. August 2, 2005 (CDT). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating planning proposals can be found at **www.dot.state.tx.us/business/avnconsultinfo.htm**. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Sandra Gaither, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200502661
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: June 28, 2005

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Public Notice - Disadvantaged Business Enterprise Goals Fiscal Year 2006

In accordance with Title 49, Code of Federal Regulations, Part 26, recipients of federal-aid funds authorized by the Transportation Equity Act for the 21st Century (TEA 21) are required to establish Disadvantaged Business Enterprise (DBE) programs. Section 26.45 requires the recipients of federal funds, including the Texas Department of Transportation (department), to set overall goals for DBE participation in U. S. Department of Transportation assisted contracts. As part of this goal-setting process, the department is publishing this notice to inform the public of the proposed overall goals, and to provide instructions on how to obtain copies of documents explaining the rationale for each goal.

The proposed Fiscal Year 2006 DBE goals are 12.54% for highway design and construction, 13.91% for aviation design and construction, and 4.29% for public transportation. The proposed goals and goal-setting methodology for each is available for inspection between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, for 30 days following the date of this notice. The information may be viewed in the office of the Texas Department of Transportation, Construction Division, Business Opportunity Programs Section, 200 E. Riverside Drive, Austin, Texas 78704, Room 2B.20.

The department will accept comments on the DBE goals for 45 days from the date of this notice. Comments can be sent to Efrem Casarez, Construction Division, 125 E. 11th St., Austin, Texas 78701; (512) 486-5502; Fax: (512) 486-5509; Email: ecasarez@dot.state.tx.us.

TRD-200502615
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: June 24, 2005

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Texas Water Development Board

Notice of Public Hearing

An attorney with the Texas Water Development Board will conduct a public hearing beginning at 9:00 a.m., August 22, 2005, Room 1-100, William Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on the proposed Fiscal Year 2006 Intended Use Plan for the Clean Water State Revolving Fund (CWSRF).

The Intended Use Plan contains a listing of treatment works projects in prioritized order which will be considered for funding in FY 2006 through the CWSRF program. The proposed Intended Use Plan has been prepared pursuant to rules for the CWSRF as adopted by the Texas Water Development Board in 31 Texas Administrative Code, Chapter 375.

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the proposed Intended Use Plan. In addition, persons may participate in the hearing by mailing written comments before August 22, 2005 to Patricia Loving, Grant Administration to Contract Administration and Reporting, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711. Copies of the proposed 2006 Intended Use Plan will be available in Room 537-A of the Stephen F. Austin Building or may be obtained from the Grant Administration to Contract Administration and Reporting, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711.

The hearing is being conducted pursuant to 31 Texas Administrative Code, §375.11 and 40 Code of Federal Regulations Part 25.

TRD-200502668
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: June 29, 2005

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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